

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/PM/VC/2020-21/9629)

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) RULES, 1995.

In respect of:

Sunilkumar Bhikhabhai Nayi

(PAN: AIHPN8889R)

In the matter of

Alora Trading Company Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an examination in the dealings in the scrip of Alora Trading Company Limited (hereinafter referred to as '**ATCL**'/'**Company**') for the period of January 01, 2017 to September 30, 2017 (hereinafter referred to as '**relevant period**') to examine the violation, if any, of the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the '**SAST Regulations**'). The shares of ATCL are listed on the Bombay Stock Exchange Limited (hereinafter referred to as '**BSE**'). It was observed by SEBI that Mr. Sunilkumar Bhikhabhai Nayi (hereinafter referred to as '**Noticee**') had continuously purchased and sold shares of ATCL in between the period

of March 08, 2017 to July 06, 2017. However, it is alleged that no disclosure was made by the Noticee under Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations. In view of the same, SEBI initiated adjudication proceedings against the Noticee under the provisions of Section 15A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'))

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide communique dated September 03, 2020, the undersigned was appointed as the Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire and adjudge under Section 15A(b) of the SEBI Act for the alleged failure on the part of the Noticee to comply with the provisions of Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

3. A Show Cause Notice ref. SEBI/HO/EAD-8/PM/VC/15670/2020 dated September 21, 2020 (hereinafter referred to as '**SCN**') was issued to the Noticee under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and penalty, if any, be not imposed on him under the provisions of Section 15A(b) of the SEBI Act for the alleged violations of Regulations 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations by the Noticee.
4. The SCN was delivered to the Noticee at his address available on record. At the same time, a digitally signed copy of SCN was also delivered to the Email ID of the Noticee, as obtained from the Demat statement of the

Noticee and also mentioned in the SCN. However, no reply to the SCN was received from the Noticee.

5. Subsequently, vide letter dated October 22, 2020, the Noticee was provided with another opportunity to submit his reply to the SCN on or before November 10, 2020. Further, vide the same letter, an opportunity of personal hearing was also provided to the Noticee on November 23, 2020. The said letter was also delivered to the address and Email ID of the Noticee. However, the Noticee not only failed to submit his reply to the SCN but also failed to appear for personal hearing on the scheduled date. In light of this, I note that the principles of Natural Justice have been complied with and I proceed on the basis of material available on record.

6. In this regard, it is pertinent to note the observations of Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in the matter of Sanjay Kumar Tayal & Others vs. SEBI decided on February 11, 2014. Hon'ble SAT observed as follows:

"...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."

CONSIDERATION OF ISSUES AND FINDINGS:

7. I have taken into consideration the facts and circumstances of the case and the material available on record, the issues that arise for consideration in the present case are:

- (a) Whether the Noticee has violated the provisions of Regulations 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations?
 - (b) Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?
 - (c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?
8. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations which read as under:

SAST Regulations, 2011:

- 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.*
- (2) Any person who together with persons acting in concert with him, holds shares or voting rights entitling them to five percent 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 percent, if there has been change in such holdings, from the last disclosure made under sub-regulation 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.

9. Before proceeding further, it would be appropriate to mention the relevant facts of the case leading to the present proceedings against the Noticee. SEBI examined the trading in the scrip of ATCL and it was observed from the trade log and Demat Statements of the Noticee that he had entered into the following transactions in the scrip of ATCL during the relevant period:

Date of purchase / sale	No. of shares bought	No. of shares sold	Holding post transaction	Type of transaction
08.03.2017	200000	-	1.61%	Market
15.03.2017	195000	-	3.17%	Market
20.03.2017	399555	-	6.38%	Market
21.03.2017	100000	-	7.19%	Market
23.03.2017	100000	-	7.99%	Market
27.3.2017	308720	600000	5.65%	308720- market 600000- off market
29.03.2017	155200	-	6.90%	Market
30.03.2017	138750	-	8.01%	Market
31.03.2017	100000	400000	5.60%	100000- Market 400000-Off market
6.7.2017	-	225000	3.8%	Off market

10. From the above table, I note that as on March 07, 2017, the Noticee was not holding any share of ATCL. Thereafter, he started purchasing shares of ATCL starting from March 08, 2017. During the period March 08, 2017 to March 20, 2017, the Noticee had purchased a total of 7,94,555 shares

due to which the shareholding of the Noticee in ATCL had become 6.38% of total share capital of the company.

11. I note that the requirements under both SAST Regulations is triggered when an entity's shareholding in a company crosses a limit of 5% of total shares of a company. I find from the material available on record that the Noticee purchased 7,94,555 shares of ATCL during the period of March 08 to March 20, 2017 which resulted in shareholding of the Noticee in the company crossing the 5% threshold of the total shareholding of the company on March 20, 2017. Hence, in terms of the provisions of Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations, the Noticee was required to make the necessary disclosures in the prescribed format to both the Company and to BSE within two working days of the purchase of the aforementioned shares by him.
12. However, I note from Email dated January 27, 2020 of BSE that the Noticee has not made any disclosure under Regulation 29(1) of SAST Regulations.
13. I further note from the above table that, subsequently, the Noticee continued to purchase and sell shares of ATCL in both market and off-market. During the period from March 21, 2017 to July 06, 2017, the Noticee purchased a total of 9,02,670 shares and sold a total of 12,25,000 shares of ATCL and as a result, the shareholding of the Noticee in ATCL had decreased to 4,72,225 shares (i.e. 3.80%). With the sale of 2,25,000 shares by the Noticee on July 06, 2017 (out of the said 12,25,000 shares sold by the Noticee), the shareholding of the Noticee had reduced by more than 2% from his shareholding on March 20, 2017 and consequently, the

Noticee was obligated to make necessary disclosure to BSE and ATCL as stipulated under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations.

14. I note from available records that no disclosure from the Noticee under Regulation 29(2) of SAST Regulations is available on BSE website. I, thus, note that the Noticee has failed to comply with the disclosure obligations that was triggered on July 06, 2017.

15. In this context, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. In this regard, I note the observation of the Hon'ble SAT in its order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI*

“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.”

16. Further, the Hon'ble SAT in its Order dated June 10, 2019, in the matter of Vipul Shah Vs SEBI had observed that -" *Under Regulations 29(2) and 29(3) of the SAST Regulation, 2011, the acquirer was required to disclose*

the disposal of shares representing 2% or more within two days of the sale. The sale made by the appellant resulted in the decrease in his shareholding which exceeded the benchmark limit as prescribed under Regulation 29(2) of the SAST Regulations. Such disclosures were required to be made which was not done. Thus, the appellant had violated the aforesaid Regulations."

17. In view of the above, I find that the violations of Regulations 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations is established against the Noticee. 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 view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*".

18. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15A(b) of the SEBI Act, which reads as under:

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 of one lakh rupees for each day during such failure continues or one crore rupees, whichever is less:

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

Factors to be taken into account by the adjudicating officer.

15J. *While adjudging 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.*

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. The material available on record also has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss

suffered by the investors as a result of the non-compliance committed by the Noticee. However, I note that the Noticee had failed to make disclosure under the provisions of Regulations 29(1) and 29(2) read with 29(3) of SAST Regulations on two different occasions during the relevant period. This clearly shows that there was a repetition of violation by the Noticee.

ORDER

21. After taking into consideration the facts and circumstances of the case, material/facts on record and also the factors mentioned in the preceding paragraphs, 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 a penalty of Rs. 4,00,000/- (Rs. Four Lakhs only) on the Noticee viz. Sunilkumar Bhikhabhai Nayi under Section 15A(b) of the SEBI Act for the failure on his part to comply with the relevant provisions of law. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.
22. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

23. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid to the Enforcement Department of SEBI. The Noticee shall provide the following details while forwarding DD/payment information:
- a) Name and PAN of the entity (Noticee)
 - b) Name of the case / matter
 - c) Purpose of Payment –Payment of penalty under AO proceedings
 - d) Bank Name and Account Number
 - e) Transaction Number
24. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
25. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Sunilkumar Bhikhabhai Nayi and also to the Securities and Exchange Board of India.

Place: Mumbai

Date: November 24, 2020

**PRASANTA MAHAPATRA
ADJUDICATING OFFICER**