BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/SRP/HKS/2018-19/1421]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995, IN THE ADJUDICATION PROCEEDINGS INITIATED AGAINST M/S ENRICH FIN & SECURITIES LIMITED [PAN: AAACE2292F] IN THE MATTER OF NON-DISCLOSURE OF ITS SHAREHOLDING IN THE SCRIP OF SCOPE INDUSTRIES (INDIA) LIMITED.

BACKGROUND

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**), initiated adjudication proceedings against Enrich Fin & Securities Limited (hereinafter referred to as **"Noticee"**) for the alleged violation of the provisions of Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as **"PIT Regulations"**) and/or Regulation 29(1) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **"SAST Regulations"**) for the alleged failure to make required disclosures of its shareholding in the scrip of Scope Industries (India) Limited (hereinafter referred to as **"SIIL/Company"**) in terms of the aforesaid provisions of PIT Regulations and SAST Regulations. During the relevant time the shares of SIIL were listed on the BSE Limited **(**hereinafter referred to as **"BSE")**.

APPOINTMENT OF ADJUDICATING OFFICER

2. Initially, Shri Biju. S was appointed as the Adjudicating Officer by SEBI, in the matter. Subsequently, on July 06, 2018 the undersigned has been appointed as the Adjudicating Officer by SEBI, to inquire into and adjudge under Section 15A (b) of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice dated November 14, 2017 (hereinafter referred to as **"SCN"**) was issued to the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**) read with Section 15-I of the SEBI Act, 1992 to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15A (b) of the SEBI Act, 1992, on the Noticee for the alleged violation of Regulation 13(1) of PIT Regulations and Regulation 29(1) read with Regulation 29(3) of SAST Regulations.

4. In the aforesaid SCN it was alleged that the Noticee had failed to make timely disclosures to SIIL/BSE, pertaining to its acquisition of shares in the scrip of SIIL on November 03, 2014 as specified under the provisions of Regulation 13(1) of PIT Regulations and Regulation 29(1) read with Regulation 29(3) of SAST Regulations.

5. Aforesaid SCN was sent at the available address of the Noticee (i.e. Ford Services Centre, 389/2/2-415, NH- 8, Rangpuri, Near Shiv Murti, Delhi – Gurgaon Road, New Delhi – 110037). However, it was returned undelivered. Therefore, the SCN was again sent on other available addresses of the Noticee. However,

the SCN sent on those other addresses also got returned undelivered. Therefore, vide letter dated July 17, 2018 the SCN was forwarded to Shri Kailash Chand Bansal, one of the Directors of the Noticee. Vide letter dated August 06, 2018, Shri Kailash Chand Bansal submitted that he along with other three Promoter Directors have resigned from the Directorship of the Company i.e. M/s Enrich Fin & Securities Limited, in April 1998. Therefore, he is not concerned with the Company in any manner since April, 1998.

6. In this regard, vide letter dated September 04, 2018 a copy of the SCN was affixed in terms of Rule 7 (c) of the Adjudication Rules, 1995 at the last known address of the Noticee. Further, scanned copy of the SCN has also been uploaded on the website of SEBI under the head Enforcement → Unserved summons/Notices.

7. In the interest of natural justice, vide the said letter dated September 04, 2018, the Noticee was also granted an opportunity of personal hearing on September 26, 2018. In the said Notice it was also mentioned that the Noticee may file reply to the SCN in the matter, if any, on or before September 26, 2018 and if the Noticee failed to do so then matter would be decided *ex-parte* on the basis of the documents/material available on record. However, despite all the above the Noticee failed to attend the said hearing and also did not file any reply in the matter.

8. I note that the Noticee has been provided opportunity of Personal Hearing. However, till date, the Noticee neither availed the opportunity nor filed any reply to the SCN. Therefore, I am inclined to proceed with the matter on the basis of the material available on record.

ISSUES FOR CONSIDERATION AND FINDINGS

9. I have carefully perused the SCN and the documents/material available on record. The issues that arise for consideration in the present case are:

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

   2) Whether the Noticee is liable for imposition of monetary penalty under Section 15A (b) of the SEBI Act, 1992?

   3) If yes, then what should be the quantum of monetary penalty?

10. It is pertinent to mention here the relevant provisions of Regulation 13(1) of PIT Regulations and Regulation 29(1) read with Regulation 29(3) of SAST Regulations, allegedly violated by the Noticee:-

PIT Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - 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."

SAST Regulations, 2011

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."

11. The SEBI (Prohibition of Insider Trading) Regulations, 1992 have been repealed by the SEBI (Prohibition of Insider Trading) Regulations, 2015. In terms of Regulation 12 of PIT Regulations, 2015, specifically Regulation 12(2) (a) and (b), any obligation or liability acquired, accrued or incurred under PIT Regulations, 1992 or any legal proceedings initiated under PIT Regulations, 1992 shall remain unaffected and proceeded with as if PIT Regulations, 1992 have not been repealed. Provisions of Regulation 12 of PIT Regulations, 2015, are mentioned hereunder in this regard:-

Repeal and Savings.

"*12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

12. I note that the allegation levelled in the SCN is to the effect that the Noticee failed to make disclosure of its shareholding in the scrip of SIIL to the Company / BSE and thereby the Noticee, violated the provisions of Regulation 13(1) of PIT Regulations and Regulation 29(1) read with Regulation 29(3) of SAST Regulations.

13. It is observed from the details available on record that the Noticee was holding 3.52% of total number of shares i.e. 3,80,000 shares of SIIL in the quarter ended September, 2014. Further, the Noticee had acquired 2,00,000 shares in the scrip of SIIL from Globe Fincap Limited on November 03, 2014 in the following manner:

Date	**No. of shares held by Noticee–pre Acquisition**	**No. of shares Acquired**	**No. of shares held by Noticee post Acquisition**
03.11.2014	3,80,000 (3.52%)	2,00,000 (1.85%) (Buy)	5,80,000 (5.37%)

14. It is observed from the materials available on record, that on November 03, 2014, the Noticee acquired 2,00,000 shares of SIIL, which resulted into increase in the percentage of the shareholding of the Noticee from 3.52% (3,80,000 shares of SIIL) to 5.37% (5,80,000 shares of SIIL). Accordingly, shareholding of the Noticee in the scrip crossed 5% of the total paid up share capital of SIIL, which required the Noticee to disclose its aggregate shareholding within 2 - working days to the Company under Regulation 13(1) of PIT Regulations and to the Company as well as to the Stock Exchanges where its shares are listed, under Regulation 29(1) read with Regulations 29(3) of SAST Regulations.

15. I find that the disclosure requirements under Regulation 13(1) of PIT Regulations and Regulation 29(1) of SAST Regulations are triggered when an entity's shareholding in a company crosses the threshold limit of 5% of the total paid up capital of the company. In the instant case, I find that the Noticee was holding less than 5% shares of SIIL till November 03, 2014 (i.e. 3,80,000 shares representing 3.52% of the total paid up capital of SIIL). As can be observed from the details mentioned above, that on November 03, 2014 the shareholding of the Noticee in the scrip of SIIL crossed threshold limit of 5% as a result of the acquisition of 2,00,000 shares of SIIL on November 03, 2014. Therefore, the Noticee was required to make the disclosure under Regulation 13 (1) of PIT

Regulations to the Company within two working days of its acquisition of shares and under Regulation 29(1) read with Regulation 29 (3) of SAST Regulations to the Company as well as to the Stock Exchanges where its shares were listed (namely BSE), within two working days of its acquisition of the shares. It is evident from BSE's email dated February 19, 2015, and SIIL's email dated February 26, 2015 that BSE and SIIL had not received any disclosures from the Noticee under the aforesaid Regulations of PIT and/or SAST Regulations in the scrip of SIIL.

16. I note that the Noticee has not come forward to offer any reply in respect of the violations alleged in the SCN, though the Noticee has been provided sufficient opportunity to file reply to the SCN and to appear for the personal hearing in the matter. In this context, the silence on the part of the Noticee clearly indicate that it does not want to answer any inquiry in respect of alleged violations stated in the SCN. Absence of any reply from the Noticee, despite being granted sufficient opportunity to do so, strengthen the presumption against the Noticee that it has failed to make the aforesaid disclosures to the Company as well as to the Stock Exchange (namely BSE) as alleged in the SCN. Therefore, as per the material available on record, I find that the Noticee has failed to make these disclosures in terms of the Regulation 13(1) of PIT Regulations and/or Regulation 29(1) read with Regulation 29(3) of SAST Regulations.

17. In this context, I observe that Hon'ble Securities Appellate Tribunal (**SAT**) has consistently held that the obligation to make disclosures within the stipulated time frame is mandatory and penalty is attracted for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of ***Akriti Global Traders Ltd. Vs SEBI*** 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."

18. Further, Hon'ble SAT in the matter of ***Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)***, observed that "*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*."

19. Hence, on the basis of the facts and circumstances of the case and the material available on record the conclusion that can be drawn in the matter is that on November 03, 2014, shareholding of the Noticee in the scrip of SIIL crossed threshold limit of 5%, which required the Noticee to make the disclosure within 2 - working days, to the Company and/or to the Stock Exchange in terms of Regulation 13(1) of PIT Regulations and/or Regulation 29(1) read with Regulation 29(3) of SAST Regulations. However, as it is observed in the preceding paragraphs that the Noticee has failed to make these requisite disclosures under the provisions of the aforesaid Regulations of PIT Regulations and SAST Regulations. Therefore, in view of the above, I hold that the Noticee has violated the provisions of Regulation 13(1) of PIT Regulations and Regulation 29(1) read with Regulation 29(3) of SAST Regulations.

20. In view of the aforesaid violations committed by the Noticee, I am of firm view that the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act, which provides 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 there under-

(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.

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

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

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."*

22. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the material available on record has not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data 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 as a result of the default of the Noticee. Further, there is nothing on record to show that the default by the Noticee was repetitive in nature.

23. Going by the facts and circumstances of the case, I am of firm opinion that by not making the disclosures on time, the Noticee has failed to comply with the mandatory statutory obligation. In this context, reliance is placed upon the Order of The Hon'ble Supreme Court in the matter of ***Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 }*** – where the Hon'ble Supreme Court of India 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….."*

24. Further, I also observe that Hon'ble SAT in its judgment dated 04.09.2013 in the matter of ***Vitro Commodities Private Limited Vs SEBI*** had observed that " *Provisions of Regulation 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." In light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 13(1) of PIT Regulations and Regulation 29(1) of SAST Regulations committed by the Noticee are not substantially different. Therefore, these violations committed by the Noticee can be considered as a single violation for the purpose of imposition of penalty on the Noticee, as violation of the first regulation would automatically trigger the violation of the second regulation.

25. Needless to say that there is no exemption from making disclosures of the kind envisaged in Regulation 13 of PIT Regulations and Regulation 29 of SAST Regulations as in the present case. Timely disclosures to the target Company/Stock Exchanges as required under the regulations would have helped dissemination of this important information to the general public in making their investment decisions.

26. I am of the view that the details of the shareholding of the persons acquiring substantial stake and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant case, the Noticee, having acquired more than 5% stake in SIIL, the timely disclosures of the same by it under the relevant provisions of PIT Regulations and SAST Regulations, were of significant importance from the point of view of the investors. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

27. On account of the same, considering the totality of the case, I am of the firm view that the Noticee has violated the provisions of Regulation 13(1) of PIT Regulations and Regulation 29(1) read with Regulation 29(3) of SAST Regulations and hence, the Noticee shall be liable for the penalty under Section 15A (b) of The SEBI Act, 1992.

ORDER

28. Taking into consideration the aforesaid facts and circumstances of the case and in exercise of the powers conferred upon me under Section 15-I of The SEBI Act, 1992, read with Rule 5 of the SEBI Adjudication Rules, 1995, I, hereby impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) on the Noticee viz. M/s Enrich Fin & Securities Limited in terms of Section 15A (b) of the SEBI Act, 1992, for the violation of the provisions of Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 and/or Regulation 29(1) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 for its failure to disclose its shareholding in the scrip of Scope Industries (India) Limited to the Company/Stock Exchange.

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 Division Chief (Enforcement Department-DRA-I), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – 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 Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : October 23, 2018
Place : Mumbai

Satya Ranjan Prasad
Adjudicating Officer