

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/PM/VC/2020-21/9633-9638)

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:

1. Kiritbhai Nathubhai Vaghani
PAN: AAWPV8520A
2. Vipulkumar Nathubhai Vaghani
PAN: AAWPV8521B
3. Jitubhai Nathubhai Vaghani
PAN: AAWPV8522C
4. Asmitaben Kiritbhai Vaghani
PAN: ADHPV2331D
5. Ritaben Vipulbhai Vaghani
PAN: ADHPV2333B
6. Rekhaben Jitubhai Vaghani
PAN: ADHPV2332A

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. Kiritbhai Nathubhai Vaghani (hereinafter referred to as '**Noticee 1**'), Mr. Vipulkumar Nathubhai Vaghani (hereinafter referred to as '**Noticee 2**'), Mr. Jitubhai Nathubhai Vaghani (hereinafter referred to as '**Noticee 3**'), Ms. Ashmitaben Kiritbhai Vaghani (hereinafter referred to as '**Noticee 4**'), Ms. Ritaben Vipulbhai Vaghani (hereinafter referred to as '**Noticee 5**') and Rekhaben Jitubhai Vaghani (hereinafter referred to as '**Noticee 6**' and hereinafter collectively referred to as '**Noticees**') had continuously sold shares of ATCL in between the period of March 17, 2017 to March 28, 2017. However, it is alleged that no disclosure was made by the Noticees under the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations. In view of the same, SEBI initiated adjudication proceedings against the Noticees 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 Noticees to comply with the provisions of Regulation 29(2) read with 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/15668/2020 dated September 21, 2020 (hereinafter referred to as '**SCN**') was issued to the Noticees 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 Noticees and why penalty, if any, should not be imposed on the Noticees under the provisions of Section 15A(b) of the SEBI Act for the alleged violations of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations by the Noticees.
4. The SCN was delivered to the Noticees at their addresses available on record. At the same time, a digitally signed copy of SCN was also delivered to the Email IDs of the Noticees, as obtained from the Demat statements of the Noticees and also mentioned in the SCN.
5. The Noticees, vide their respective emails dated October 13, 2020, requested for time to submit their replies to the SCN. Subsequently, Mr. Anil Shah, vide his Email dated October 22, 2020, requested for time to submit replies on behalf of the Noticees.
6. Thereafter, vide letter dated October 29, 2020, the Noticees were provided time till November 15, 2020 to submit their replies to the SCN. Further, an opportunity of personal hearing was also provided to the Noticees on November 23, 2020.
7. In response to the same, the Noticees, vide 3 separate letters dated November 06, 2020, submitted their respective replies to the SCN. In the

said replies, the Noticees, while accepting their respective transactions, have contended that they were not Persons Acting in Concert (**PAC**) and, therefore, no disclosure requirements were triggered by their trades in the scrip of ATCL.

8. Subsequently, Mr. Anil Shah, Advocate, appeared as authorized representative (**AR**) of the Noticees in the personal hearing on November 23, 2020 and reiterated the submissions made by the Noticees in their respective replies dated November 06, 2020.

CONSIDERATION OF ISSUES AND FINDINGS:

9. 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 Noticees have violated the provisions of Regulation 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?

10. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations which read as under:

SAST Regulations, 2011:

29(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.

11. Before proceeding further, it would be appropriate to mention the relevant facts of the case leading to the present proceedings against the Noticees. It was alleged that the Noticees are persons acting in concert (**PAC**) in terms of the definition of PACs, as defined under Regulation 2(1)(q) of SAST Regulations. On the other hand, the Noticees have argued that they are not PACs. Therefore, it is relevant to discuss the definition of PACs, as given in Regulation 2(1)(q) of SAST Regulations:

(q) “persons acting in concert” means,—

(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

(2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established, —

(i) a company, its holding company, subsidiary company and any company under the same management or control;

(ii) a company, its directors, and any person entrusted with the management of the company;

(iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;

(iv) promoters and members of the promoter group;

(v) immediate relatives:

(vi) a mutual fund, its sponsor, trustees, trustee company, and asset management company;

(vii) a collective investment scheme and its collective investment management company, trustees and trustee company;

(viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;

(viii a) an alternative investment fund and its sponsor, trustees, trustee company and manager;

(ix)....

(x) a merchant banker and its client, who is an acquirer;

(xi) a portfolio manager and its client, who is an acquirer;

(xii) banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of

the acquirer, and where the acquirer is an individual, of the immediate relative of such individual:

Provided that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;

(xiii) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unitholder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund:

Provided that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with the Board;

Explanation.—For the purposes of this clause “associate” of a person means,—

- (a) any immediate relative of such person;*
- (b) trusts of which such person or his immediate relative is a trustee;*
- (c) partnership firm in which such person or his immediate relative is a partner; and*
- (d) members of Hindu undivided families of which such person is a coparcener;*

12. From the above definition of PACs, I note that the immediate relatives are deemed to be PACs and, in such a case, the burden of proof shifts on such deemed PACs to prove that they are not PACs.
13. In the present matter, I note that Noticees 1, 2 and 3 are brothers and Noticees 4, 5 and 6 are the respective wives of Noticees 1, 2 and 3. Therefore, the Noticees collectively fall under the category of immediate relatives and, therefore, they are deemed to be PACs. In such a case, the burden of proof shifts to the Noticees to prove that they are not PACs. However, I note that, while the Noticees have vehemently argued that they are not PACs, no evidence, whatsoever, has been submitted in the support of such argument.
14. I further note from the letters dated March 18, 19 and April 09, 2019 of the Noticees, submitted in reply to the letter dated March 11, 2019 of SEBI, that the Noticees have not raised any such issue in the said letter. Therefore, the argument of the Noticees that they are not PACs seems to be an afterthought.
15. I further note from the trading pattern of the Noticees that they were holding shares of ATCL at least from January 01, 2017. Thereafter, suddenly all of them started selling their respective shares from March 17, 2017 and they had completely sold their respective holdings on or before March 30, 2017. This clearly suggest some kind of meeting of minds among the Noticees. Therefore, the argument of the Noticees that they are not PACs cannot be accepted in the facts of the present matter.
16. It was observed from the Demat statements of the Noticees that each of the Noticees were holding 2,50,000 shares of ATCL at the start of relevant

period in their respective Demat Accounts. Thus, the Noticees were together allegedly holding 15,00,000 shares of ATCL which amounts to 12.06% of total shareholding of the Company. Thereafter, the Noticees had entered into the following transactions in the scrip of ATCL during the relevant period:

Name of the Noticee	Date of sale	No. of shares sold	Shareholding post transactions	Shareholding post transactions (in % terms)
Shareholding of the Noticees as on 01.01.2017			15,00,000	12.06%
Kiritbhai Nathubhai Vaghani	17.03.2017	13000	14,00,000	11.25%
Vipulkumar Nathubhai Vaghani		16000		
Jitubhai Nathubhai Vaghani		25000		
Ashmitaben Kiritbhai Vaghani		25000		
Rekhaben Jitubhai Vaghani		12000		
Ritaben Vipulbhai Vaghani		9000		
Vipulkumar Nathubhai Vaghani	20.03.2017	129500	11,00,000	8.84%
Jitubhai Nathubhai Vaghani		37500		
Ritaben Vipulbhai Vaghani		133000		
Vipulkumar Nathubhai Vaghani	21.03.2017	66500	9,63,700	7.75%
Jitubhai Nathubhai Vaghani		2400		
Ritaben Vipulbhai Vaghani		67400		
Vipulkumar Nathubhai Vaghani	22.03.2017	38000	6,89,700	5.54%
Kiritbhai Nathubhai Vaghani		63000		
Jitubhai Nathubhai Vaghani		5000		
Ashmitaben Kiritbhai Vaghani		58500		
Rekhaben Jitubhai Vaghani		68900		
Ritaben Vipulbhai Vaghani		40600		
Kiritbhai Nathubhai Vaghani	23.03.2017	12500	6,24,700	5.02%
Ashmitaben Kiritbhai Vaghani		31500		
Rekhaben Jitubhai Vaghani		21000		
Kiritbhai Nathubhai Vaghani	24.03.2017	52000	4,63,700	3.73%
Ashmitaben Kiritbhai Vaghani		55500		
Rekhaben Jitubhai Vaghani		53500		
Kiritbhai Nathubhai Vaghani	28.03.2017	20500	3,63,700	2.92%
Ashmitaben Kiritbhai Vaghani		79500		
Kiritbhai Nathubhai Vaghani	29.03.2017	5400	2,63,700	2.12%
Rekhaben Jitubhai Vaghani		94600		
Kiritbhai Nathubhai Vaghani	30.03.2017	83600	1,13,700	0.91%
Jitubhai Nathubhai Vaghani		66400		

17. From the above table, I note that as on March 16, 2017, the Noticees were cumulatively holding 12.06% of total shareholding of ATCL. Thereafter, they started selling shares of ATCL starting from March 17, 2017. During the period March 17, 2017 to March 30, 2017, the Noticees had sold most of their shareholding of ATCL.
18. I further note from the above table that, the Noticees sold a total of 13,86,300 shares of ATCL and as a result, the cumulative shareholding of the Noticees in ATCL had decreased to 1,13,700 shares (i.e. 0.91% of total shareholding of the Company). With the sale of 3,00,000 shares by the Noticees on March 20, 2017 (out of the said 13,86,300 shares sold by the Noticees), the cumulative shareholding of the Noticees had reduced by more than 2% from their cumulative shareholding on March 16, 2017 and consequently, the Noticees were obligated to make necessary disclosure to BSE and ATCL as stipulated under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations.
19. Similarly, the cumulative shareholding of the Noticees was again reduced by more than 2% on March 22, 2017 and March 28, 2017 when they sold 2,74,000 shares and 1,00,000 shares respectively on the abovementioned dates. Consequently, the Noticees were obligated to make necessary disclosure to BSE and ATCL as stipulated under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations.
20. I note from available records that no disclosure from the Noticees under Regulation 29(2) of SAST Regulations is available on BSE website. I, thus, note that the Noticees have together failed to comply with the disclosure

obligations that were triggered on March 20, 2017, March 22, 2017 and March 28, 2017.

21. 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.”

22. 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.”

23. In view of the above, I find that the violations of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations is established against the Noticees. 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*".

24. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticees 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:

25. 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.

26. The material available on record also has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the non-compliance committed by the Noticees. However, I note that the Noticees had failed to make disclosure under the provisions of Regulations 29(2) read with 29(3) of

SAST Regulations on three different occasions during the relevant period.

This clearly shows that there was a repetition of violation by the Noticees.

ORDER

27. 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 the following penalty on the Noticees under Section 15A(b) of the SEBI Act for the failure on their part to comply with the relevant provisions of law.:

Name of the Noticee	Penalty
Kiritbhai Nathubhai Vaghani	Rs. 1,00,000/- (Rupees One Lakh only)
Vipulkumar Nathubhai Vaghani	Rs. 1,00,000/- (Rupees One Lakh only)
Jitubhai Nathubhai Vaghani	Rs. 1,00,000/- (Rupees One Lakh only)
Ashmitaben Kiritbhai Vaghani	Rs. 1,00,000/- (Rupees One Lakh only)
Ritaben Vipulbhai Vaghani	Rs. 1,00,000/- (Rupees One Lakh only)
Rekhaben Jitubhai Vaghani	Rs. 1,00,000/- (Rupees One Lakh only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

28. 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.

29. 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
30. 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.
31. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Kiritbhai Nathubhai Vaghani, Vipulkumar Nathubhai Vaghani, Jitubhai Nathubhai Vaghani, Ashmitaben Kiritbhai Vaghani, Ritaben Vipulbhai Vaghani, Rekhaben Jitubhai Vaghani and also to the Securities and Exchange Board of India.

Place: Mumbai

Date: November 24, 2020

PRASANTA MAHAPATRA

ADJUDICATING OFFICER