

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD/PM-AA/AO/1/2017-18]**

**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 Kannan Kashi Vishwanath**  
**(PAN: ADJPV4912G)**

In the matter of  
**Dr. Datsons Lab Limited**

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (**SEBI**) conducted investigation into the trading activities of certain entities in the scrip of Dr. Datsons Lab Limited (hereinafter referred to as '**DLL / Company**') during the period of January 01, 2014 to May 21, 2015 (hereinafter referred to as '**investigation period**'). Investigation revealed that Shri Kannan Kashi Vishwanath (hereinafter referred to as "**Noticee**") was promoter and director of the company during the investigation period and there were changes in his shareholding in the company by more than 25,000 shares on 02/06/2014, 09/06/2014, 13/09/2014 and 21/11/2014. It was observed that he delayed in making requisite disclosures to the stock exchanges within two working days as stipulated under Regulations 13(4) and Regulation 13(4A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**").

2. The details of changes in the shareholding of the Noticee in the company are as under:

Date	No of shares held - pre Acquisition / Disposal (%)	No of shares Acquired / (disposed of)	No of shares held - post Acquisition/ disposal (%)	Mode	Date of disclosure to stock exchange	Due date of Disclosure under PIT
02/06/2014	19,50,000 ( 3.91%)*	(4,00,000)	15,50,000 (3.11 %)	Invocation	05/06/2014	04/06/2014
09/06/2014	15,50,000 ( 3.11%)	(1,50,000)	14,00,000 (2.80 %)*	Invocation	18/06/2014	11/06/2014
13/09/2014	14,00,000 (2.62 %)*	(2,00,000)	12,00,000 (2.25 %)*	Invocation	23/09/2014	16/09/2014
21/11/2014	12,00,000 (1.14 %)*	(10,57,500)	1,42,500 (0.14 %)	Invocation	26/11/2014	25/11/2014

\*The change in percentage shareholding is due to change in total equity share capital of the company during the period

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Shri Nagendraa Parakh was appointed as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘**Adjudication Rules**’) to inquire into and adjudge under section 15A(b) of the SEBI Act for the alleged violations of provisions of Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 and Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations, 2015**”). Subsequently, vide order dated May 18, 2017, I have been appointed as Adjudicating Officer in place of Shri Nagendraa Parakh in the present matter.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

4. A Show Cause Notice no. EAD/AO-PM/NK/15094/2017 dated June 30, 2017 (hereinafter referred to as “**SCN**”) was issued to the Noticee under

Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of the SEBI Act, 1992 for the alleged violations specified in the SCN. It was alleged in the SCN that Noticee violated Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992. Copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.

5. Vide letter dated July 18, 2017, Noticee filed its reply to the SCN and also requested for an opportunity of personal hearing. Noticee was given opportunities of personal hearing on August 30, 2017 and September 08, 2017. Ms. Purti Minawala and Mr. Kunal Mehta from M/s Crawford Bayley & Co., Advocates and Solicitors, attended the personal hearing on September 08, 2017 on behalf of the Noticee as his Authorised Representatives (ARs). They reiterated the submissions made in the reply to SCN and sought time to file additional written submissions in the matter. Additional written submissions were made by the Noticee vide letter dated September 13, 2017. The summary of submissions are as follows:

- *Regulation 13(4) and 13(4A) read in consonance with Regulation 13(5) of PIT Regulations, 1992 provides that in the event of a change in the shareholding of a director or promoter by an amount of ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding, whichever is lower, as a result of allotment of shares, or on acquisition or sale of shares or voting rights, the director or promoter is required to disclose the same to the respective listed company and the stock exchanges within a period of 2 working days from the date on which the said director or promoter receives the underlying intimation.*
- *In each of the four instances, the shareholding has not decreased as a result of any sale of shares but due to wrongful invocation of pledge by the respective pledgees.*

- In each instance, pledges were invoked by the respective pledgees and no form of intimation, whether oral or written, was given either by pledgees or the concerned depositories and it came to the knowledge only upon checking the records of the concerned depositories.
- In each of the four instances, information about invocation came to the knowledge of the Noticee on June 03, 2014, June 11, 2014, September 19, 2014 & November 24, 2014 respectively. The disclosures were made within two working days in each instance i.e. i) to the company on June 03, 2014 and to the Stock exchange on June 05, 2014, ii) to the company on June 11, 2014 and to the Stock exchange on June 12, 2014 though the same may have reached exchange only on June 18, 2014, iii) to the company and to the Stock exchange on September 19, 2014 though the same may have reached exchange only on September 23, 2014 and iv) to the company and the Stock exchange on November 26, 2014.
- Delay counted by the noticee is as under:

Date and day of invocation	Due Date	Delay (excluding holidays)	
	Date when it came to notice	From the date of actual invocation to date of filing	From the date when invocation came to the notice
	Date of actual disclosure		
02/06/2014 (Mon)	04/06/14 (Wed)	1	Nil
	03/06/14 (Tue)		
	05/06/14 (Thu)		
09/06/2014 (Mon)	11/06/14 (Wed)	4	3
	11/06/14 (Wed)		
	18/06/14 (Wed)		
13/09/2014 (Sat)	16/09/14 (Tue)	4	1
	19/09/14 (Fri)		
	23/09/14 (Tue)		
21/11/2014 (Fri)	25/11/14 (Tue)	1	Nil
	25/11/14 (Tue)		
	26/11/14 (Wed)		

- There has been slight delay in making the disclosures with stock exchanges only in case of Disposal II and Disposal III. However, such delay was purely due to the fault of pledgees and without any deliberate intention to violate the law. The delayed disclosures have not caused any harm to the interest of the shareholders of the company or the public at large since the necessary information was made available in public domain, albeit after a delay of few days.

- *Purported default under the notice was not intentional and merely circumstantial. The dispute with pledgee III is also sub-judice and punishing the noticee for the negligence of the Pledgee would cause grave harm and loss in contravention of the principles of natural justice.*
- *Noticee also referred to the order dated November 27, 2015 of Adjudicating Officer (AO), SEBI, in respect of United Breweries (Holding) Ltd. & Ors wherein AO decided against the imposition of monetary penalty for 1 day delay in making disclosure.*
- *Reference was also made to Regulation 58(8) and (9) of DP Regulations showing that the depository is to immediately inform participants of the pledger and pledgee about the invocation of pledge and who in turn would make necessary changes in their records and inform the pledger and pledgee respectively.*
- *Reference was also made to the order dated October 28, 2014 of Hon'ble Securities Appellate Tribunal (SAT) in the matter of SICOM Ltd and guidance note issued by SEBI on PIT Regulations, 2015.*

### **CONSIDERATION OF ISSUES AND FINDINGS**

6. I have perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
  - a. Whether Noticee had violated Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992? and
  - b. Does the violation, if any, attract monetary penalty under section 15A(b) of SEBI Act?
7. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 which reads as under:-

#### **PIT Regulations, 1992**

##### ***"Continual disclosure.***

*13. (4) Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) 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.*

*(4A) 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.*

*(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :*

*(a) the receipts of intimation of allotment of shares, or*

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

**Violation of Regulation 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992**

8. Regulation 13(4) and 13(4A) read with 13(5) of PIT Regulations inter alia requires disclosure in Form D to the company and to the Stock Exchange by any person who is a Director or Officer of a listed company / promoter or part of promoter group, of 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 which exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower; and such disclosure has to be made within two working days of acquisition or sale of shares or voting rights, as the case may be.
9. Upon perusal of the documents available on record, I find that it is not in dispute that the Noticee was Director and Promoter of DLL. Further, the transactions in question as specified in the SCN have also not been disputed and so also the dates when the disclosures were made to the stock exchanges.

10. However, it was contended by the Noticee that the change in the shareholding happened because of the invocation of pledge by the respective pledgees who did so without any intimation to the Noticee. It was submitted that even the depository participants did not inform the noticee about such invocation of pledge and that the noticee came to know of such invocations when it checked the records of the Depository and immediately thereafter he made the disclosures to the exchanges. It was admitted, though, that there was delay in making disclosure ranging from 1-4 days from the due date and *nil* to 3 days from the date when the invocation came to the notice of the Noticee.

11. I find that, though, noticee has claimed that invocation was not informed to him either by the pledgee or by the Depository participants, he has not submitted any documentary proof to substantiate his claims. Moreover, I am of the view that if we go by the noticee's interpretation that the due date should be counted from the date of receipt of the intimation about the invocation of pledge, then it would lead to an undesirable situation where investors would not be able to know of the change in the shareholding of the Directors/Promoters of the company resulting from the invocation of pledge within the time prescribed by the provisions of PIT Regulations. The main objective of the PIT Regulation in respect of the disclosure norms is to bring about the transparency in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. Directors/Promoters of a company are responsible for the policy making and control of the business and holds important position in the eyes of the investors and that is the reason why they have been treated differently and more onerous responsibility has been cast on them in respect of continual disclosures under PIT Regulations.

12. Accordingly, if we go by the interpretation adopted by the Noticee then it would defeat the very purpose of disclosure obligation under Regulation 13(4) and 13(4A) of PIT Regulations and would negate the very principles on which disclosure obligations under the PIT Regulations are based. Hence, the contention of the Noticee that the delay in disclosure was due to the invocation of pledge without informing the Noticee is not acceptable.
13. In the instant matter, when respective pledgees invoked the pledge and got the shares transferred in their demat accounts, change in the shareholding of the Noticee has taken place. For the purpose of PIT Regulations, what is relevant is acquisition/disposal of shares and once acquisition/disposal of shares exceeds the limits prescribed therein, the provisions of PIT Regulations are triggered. Ultimately, the fact remains that there was change in the shareholding of Noticee and such change exceeded benchmark limit of 25,000 shares on four occasions. The Noticee ought to have made the requisite disclosures to the company and the stock exchanges within two days as stipulated under Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992. Admittedly, the disclosure was made to the stock exchanges with a delay ranging from 1-4 days from the due dates. I am of the view that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance. Timeliness is the essence of disclosure under the PIT Regulations and delayed disclosure would not serve the purpose for which the obligation is cast in these Regulations.
14. In view of the aforesaid discussion, I find that the Noticee failed to make the requisite disclosures to the stock exchanges within the timeline as



stipulated under Regulation 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 about change in their shareholding exceeding 25,000 shares of DLL on four occasions.

**Issue II - Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act?**

15. By not making the disclosures on time, Noticee failed to comply with their mandatory statutory obligation. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was 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."*

16. As the violation of Regulation 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 is established, the Noticee is liable for monetary penalty under section 15A(b) of SEBI Act, which, at the time of violation, read as under:

**"15A. Penalty for failure to furnish information, return, etc.-** *If any person, who is required under this Act or any rules or regulations made thereunder,-*

*(a) .....*;

**Before 08.09.2014**

*(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 which such failure continues or one crore rupees, whichever is less;*

**With Effect from 08.09.2014**

*(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;"*

17. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of 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."*

18. The amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantified in the material available on record. Considering that there has been delay in making disclosure on four occasions, the same are treated as repetitive. It is important to note that the details of the shareholding of the promoters/Directors and changes thereto is an important element for the proper functioning of the securities market and timely disclosure thereof to the stock exchanges etc. are of significant importance from the standpoint of investors. The purpose of these disclosures is to bring about transparency in the transactions of Directors/Promoters and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of *M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI* (Appeal No. 209 of 2014 order dated August 11, 2014), as regards the importance of disclosure, 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."*

19. It is contended by the Noticee that the non-compliance was unintentional, that there was no undue benefit derived by him and no harm was caused to the investors. In this regard, I note that Hon'ble SAT, through various judgments, has consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the PIT Regulations. However, they are nevertheless treated as mitigating factors while arriving at the quantum of penalty.

20. Hon'ble SAT in the matter of *Akriti Global Traders Ltd. vs. SEBI* (Appeal No. 78 of 2014 order dated September 30, 2014), observed that *"Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, 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 from such delay"*.

21. In the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014 order dated October 14, 2014), observed that *"..... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any*

*merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures.”*

22. In this regard, Hon'ble Supreme Court of India in the matter of *Shriram Mutual Fund* referred *supra* had observed that “... *imputing mens rea into the provisions of Chapter VIA is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations.*”

23. Pleading for the lenient view in the matter, Noticee had referred to the order dated November 27, 2015 of Adjudicating Officer, SEBI, in respect of *United Breweries (Holding) Ltd. & Ors* wherein AO decided against the imposition of monetary penalty for 1 day delay in making disclosure. I note that the instant case is distinguishable from the aforesaid order referred by the Noticee. In the instant matter, there are four instances where there was delay in making disclosure ranging from 1-4 days and the quantities of shares involved due to invocation of pledge were 4,00,000, 1,50,000, 2,00,000 and 10,57,500, while in the order referred there was only one instance of delay of 1 day of shares involving 10,000 shares only and that too due to release of shares.

24. Further, the order dated October 28, 2014 of Hon'ble SAT in the matter of *SICOM Limited*, referred to by the Noticee in his reply, supports the view of the undersigned taken above that upon invocation of pledge, there is transfer of beneficial ownership of the shares from the pledger to the pledgee and if because of such transfer the threshold limit for making disclosure stipulated under the PIT Regulations is breached either by the

pledger or by the pledgee or by both then they have to make the requisite disclosures.

25. The reliance placed by the noticee on the guidance note issued by SEBI on the PIT Regulations, 2015 is misplaced as the same is in different context unrelated to the issues involved in the present matter. The said guidance note explains that the intention of SEBI is to prohibit creation or invocation of pledge for enforcement of security *while in possession of UPSI*.

26. While it has been established that the Noticee has violated Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992, I note here that single transactions are falling into two different provisions because of Noticee's twin relationship with the company in the capacity of Director as well as promoter. It is noticed that provisions of Regulations 13(4) and Regulation 13(4A) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second if the person is acting in two capacity. Accordingly, I am of the opinion that it would be just and proper that there is single imposition of penalty for violation of both these provisions.

### **ORDER**

27. After taking into consideration the nature and gravity of charges established, the facts and circumstances of the case and the mitigating factors as enumerated above, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a monetary penalty of ₹ 1,00,000/- (Rupees One Lakh Only) on the Noticee i.e. Shri Kannan Kashi Vishwanath under section 15A(b) of SEBI Act, 1992 for violation of

Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 and Regulation 12(2) of PIT Regulations, 2015.

28. 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.

29. 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, 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 payments 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, copies of this order are sent to Noticee and also to the Securities and Exchange Board of India.

**Date: October 16, 2017**  
**Place: Mumbai**

**Prasanta Mahapatra**  
**Adjudicating Officer**