

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/59/2018-19]**

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
("SEBI ACT") READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA
(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY
ADJUDICATING OFFICER) RULES, 1995)**

In respect of:

**Mr. Sanjeev Burman Jhaveri
(PAN: ABKPJ9608A)**

In the matter of Super Domestic Machines Ltd.

Facts of the Case:

1. Securities and Exchange Board of India ("SEBI") pursuant to examination of the scrip Super Domestic Machines Ltd. (hereinafter referred to as "Company") had observed that Sanjeev Burman Jhaveri, (hereinafter referred to as "Noticee") had violated Regulation 29(1) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) (hereinafter referred as SAST 2011) and 13(1) of Prohibition of Insider trading (hereinafter referred as PIT 1992).
2. In this order wherever PIT Regulations, 1992 is mentioned it should be referred to as PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.
3. The shares of the company are listed on Bombay Stock Exchange Limited (hereinafter referred to as "BSE").
4. Noticee had acquired 5400 shares of the company on January 21, 2015 and his total shareholding in the company had increased to 2, 17,700 shares i.e., 5.02% of the total share capital of the company.
5. It is alleged that shareholding of Noticee had crossed 5 % on January 21, 2015, and hence made him liable to make disclosure under Regulation 29(1) read with 29(3) of SAST and Regulation 13(1) of PIT 1992.
6. As per BSE email dated July 28, 2016 it was confirmed that no disclosure has been received from the noticee during the investigation period.

7. A company, in its reply dated September 14, 2016 has confirmed that it had received disclosures under SAST 2011 and PIT 1992 from certain entities during the investigation period which does not include Noticee
8. Hence it was alleged that Noticee has violated Regulation 29(1) read with 29(3) of SAST 2011 and 13(1) of PIT 1992.

Appointment of Adjudicating Officer

9. SEBI had initiated adjudication proceedings against Noticee. and the undersigned was appointed as Adjudicating Officer vide order dated May 16, 2017 under Section 15 I of SEBI Act read with Rule 3 of the SEBI AO Rules to inquire into and adjudge under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act"), the alleged violation of Regulation 29(1) read with 29(3) of SAST 2011 and 13(1) of PIT 1992 by Noticee.

Show Cause Notice, Reply and Personal Hearing

10. Based on the findings, Show Cause Notice dated October 11, 2017 ("SCN") was issued to Noticee.
11. The SCN sent to Noticee through Registered Post Acknowledgement due was undelivered. Hence it was sent to the email address: jhaveri@hotmail.co.in and Jhaveri@hotmail.com with digital signature. The said email was delivered

Hearing:

12. In order to comply with the principles of natural justice, an opportunity of personal hearing was granted to the Noticee on November 30, 2017 vide notice dated November 02, 2017. Noticee did not appear for hearing. Another opportunity of hearing was granted to Noticee on January 12, 2018 vide letter dated December 06, 2017 through speed post and email with digital signature of AO. The Hearing notices sent through Registered Post were undelivered, however those were duly delivered at the aforesaid email addresses of the noticee. Noticee did not appeared on January 12, 2018 as well.
13. I note enough opportunity has been provided to noticee and hence I proceed further based on material available and *ex-parte* in the matter

Consideration of Issues, Evidence and Findings

14. I have carefully perused the charge levelled against Noticee in the SCN and all the documents available on record. In the instant matter, the following issues arise for consideration and determination in respect of:
 - I. **Whether Noticee has violated Regulation 29(1) read with 29(3) of SAST 2011 and 13(1) of PIT 1992.**

- II. Does the violation, if any, on the part of Noticee attract monetary penalty under Section 15A (b) of the Act?
- III. If so, what would be the quantum of monetary penalty that can be imposed on Noticee taking into consideration the factors mentioned in Section 15J of the Act?
15. Before proceeding further, I would like to refer to the relevant provisions of the SAST regulations which read as under:

Relevant provisions of 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.

29.(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.

Relevant provisions of PIT Regulation 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 a 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.

Relevant provisions of PIT Regulation 2015

Repeal and Savings.

12. (2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered there under, 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;

Findings:

16. Enough opportunity was given to the Noticee to represent its case by way of reply to SCN and also by appearance for personal hearing. I am constrained to proceed with the matter on the basis of the material available on record.
17. Noticee has not replied to the SCN and nor attended the two opportunities of personal hearing
18. I note from the documents on record that Noticee had acquired 5400 shares of the company on January 21, 2015 which leads to increase in his shareholding and reached 5.02% of the total share capital of the company.
19. BSE vide email dated July 28, 2016 to SEBI confirmed that Noticee did not make any disclosure to the exchange under PIT Regulations and SAST Regulations for the aforesaid acquisition of shares.
20. Although several opportunities were given to the Noticee, he has failed to make any submission. In this regard, I would like to rely upon the findings of the *Hon'ble SAT in the matter of Sanjay Kumar Tayal Vs. SEBI (Appeal No. 68 of 2013 order dated February 11, 2014, regarding the significance of filing the reply to the SCN, in which it stated that "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 levelled against them in the show cause notices."*
21. In view of the above, I find that the allegation of violation of regulation 29(1) read with 29(3) of SAST Regulations and regulation 13(1) of PIT Regulations by the Noticee stands established.
22. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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...".
23. Section 15A(b) of the SEBI Act, 1992 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 there under,-

(b) to file any return or furnish any information, books or other documents within the time specified there for in the regulations, fails to file return or furnish the same within the time specified there for 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.

24. At this juncture, I would like to rely the Order dated September 04, 2013 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Vitro Commodities Private Limited Vs. SEBI* wherein the Hon'ble SAT had observed that "It may be noticed that provisions of Regulations 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".
25. In the 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 the PIT Regulations and Regulation 29(1) of the SAST Regulations committed by the Noticee are not substantially different. Therefore, these violations can be considered as a single violation for the purpose of imposition of penalty on the Noticee in the matter.
26. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 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 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.

27. I observe that, from the material available on record, it is not possible to ascertain any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default. I note that the default of the Noticee is not repetitive in nature. I note that correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision.

ORDER

28. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose the following monetary penalties on the Noticee:

Name of the Noticee	Provisions of Law Violated	Penalty Provision	Penalty Amount (in Rs.)
Sanjeev Burman Jhaveri,	Regulation 29(1) read with 29(3) of SAST 2011 and 13(1) of PIT 1992	15A(b)	Rs. 2,00,000 (Rupees Two lakhs only)

29. Noticee shall remit/pay the said amount of penalty shall be paid within 45 days of receipt of this order either by way of demand draft in favour of "SEBI - Penalties remittable to Government of India", payable at Mumbai, or by e-payment facility into Bank account the details of which are given below:

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

30. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manager (Enforcement Department - DRA- I) of SEBI. 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:

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)	

31. In terms of Rule 6 of the Rules, copy of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 27, 2018
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER