

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/CB/305/2018]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

Mr. Amitkumar Rameshchandra Rana (PAN – ASPPR5709L) having address at Pan Pole at Khambhat, Dist. Anand, Near Mandai, Khambhat - 388620

In the matter of *Naisargik Agritech India Limited*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as the “**SEBI**”) upon suspicion of violation of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) had conducted examination in the shares of M/s Naisargik Agritech India Limited (hereinafter be referred to as the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period from June 2014 to December 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed commission of violation of Regulation 13(4) read with 13(5) of the PIT Regulations by Mr. Amitkumar Rameshchandra Rana, (hereinafter be referred to as the “**Noticee**”) for not making disclosures upon change of his shareholding in the Company.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the “**Adjudication Rules**”) vide order dated August 09, 2016 to inquire into and adjudge under Section 15A (b) of the SEBI Act against the Noticee for the alleged violation of aforesaid provisions of PIT Regulations. Proceedings of appointment of the undersigned as Adjudicating Officer was communicated vide communique dated August 29, 2016.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD/EAO/RA/CB/17726/2016 dated July 28, 2017 (hereinafter be referred to as the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under Section 15A (b) of the SEBI Act for the alleged violations of Regulation 13(4) read with 13(5) of the PIT Regulations.
4. The core allegations levelled against the Noticee in the SCN are summarized as below:
- a) The BSE, vide letter dated August 28, 2014, informed the SEBI that the Noticee, a Director of the Company had purchased 54358 shares in the scrip of the Company and did not file any disclosures for the aforesaid transactions in terms of the PIT Regulations. Moreover, the BSE, vide letter dated January 12, 2015, had informed SEBI of the following trades carried out by the Noticee in the scrip of the Company during the period July – November 2014.

Sr . No.	Trade date	Client Name	Bought Qty	Buy Rate	Sold Qty	Sold Rate	Buy value	Sold value
1	23-Jul-2014	Amitkumar Rameshchandra Rana	11000	175.00	0	0.00	1925000.00	
2	24-Jul-2014	Amitkumar Rameshchandra Rana	0	0.00	11000	176.44		1940807.30
3	25-Jul-2014	Amitkumar Rameshchandra Rana	34853	176.28	0	0.00	6143974.40	
4	01-Aug-	Amitkumar Rameshchandra Rana	19505	137.40	0	0.00	2679987.00	1527191.28

	2014							
5	07-Oct-2014	Amitkumar Rameshchandra Rana	76436	19.97	76436	19.98	1526426.92	

- b) An examination of the aforesaid trades carried out by the Noticee in the scrip of the Company revealed that all the trades had resulted in the change of holdings of the Noticee in the Company in excess of Rs. 5 lakhs in value.
- c) Regulation 13(4) of the PIT Regulations requires any person, who is a director or officer of a listed company, to disclose to the company and stock exchange where the securities are listed, the total number of shares or voting rights held and change in shareholding or voting rights within two working days of acquisition or sale of shares or voting rights as the case may be, if there has been a change in such holdings of such person from the last disclosure made under Regulation 13(2) of the PIT Regulations, or under Regulation 13(4) of the PIT Regulations, and the change exceeds Rs. 5 lakhs in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.
- d) SEBI had sent an e-mail dated April 23, 2015 to the Company to ascertain whether the Noticee had made any disclosures to the Company in terms of PIT Regulations. However, no response to the e-mail dated April 23, 2015 was received by the SEBI.
- e) It was alleged that the aforesaid non-disclosure by the Noticee regarding change in his shareholding in the Company was in violation of Regulation 13(4) read with 13(5) of the PIT Regulations, text of which is mentioned as below:

SEBI (Prohibition of Insider Trading) Regulations, 1992

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.

(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.”

5. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act, which reads 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,-

(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.”

6. The SCN was served upon by way of Speed Post with Acknowledgment Due (SPAD) at two addresses of the Noticee, as available in the records, one of which could not be delivered. The Noticee was advised to furnish his reply towards the SCN within 14 days of its receipt, failing which, it shall be presumed that the Noticee had no reply to submit and the matter will be proceeded with on the basis of evidence available on record. However, no reply in response to the SCN was submitted by the Noticee.
7. On non-receipt of any reply towards the SCN, an opportunity of personal hearing, in the interests of natural justice was provided to the Noticee on January 05, 2018 vide hearing notice dated December 13, 2017. The Noticee was also advised to submit his reply towards the SCN by December 29, 2017. The Hearing Notice was also served upon the Noticee by way of SPAD and acknowledgment of the same is available on records.
8. However, the Noticee did not avail the opportunity of hearing on January 05, 2018. Thereafter, a final opportunity of hearing was provided to the Noticee on February 15, 2018 vide hearing notice dated January 31, 2018. The Noticee was also advised to submit his reply towards the SCN, if any, by February 14, 2018. However, the Noticee

did not submit any reply towards the SCN nor did he avail the opportunity of hearing on February 15, 2018. The consequences of failure to reply and / or non-appearance had been mentioned in the hearing notice dated January 31, 2018 wherein, the Noticee was informed that if no appearance is made by the Noticee, then the matter would be decided further on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules.

9. I note that sufficient opportunities to submit reply and to appear for personal hearing have been given to the Noticee, none of which were availed by it. Hence, I find it relevant to refer to the order dated December 08, 2006 of the Hon'ble Securities Appellate Tribunal in the matter of **Classic Credit Ltd. v. SEBI** (Appeal No. 68 of 2003) wherein, it observed, "...the appellants did not file any reply to the second show-cause. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them". I also find it pertinent to refer to order of the Hon'ble Securities Appellate Tribunal in the matter of **Sanjay Kumar Tayal & Ors. v SEBI** (Appeal 68 of 2013 dated February 11, 2014), wherein the Hon'ble SAT had *inter alia* observed that, "...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..." Thus, I am of the view that the allegations levelled in the SCN and the evidences enclosed therewith are not in dispute in absence of any reply from the Noticee.
10. Keeping the aforesaid in mind, I am of the opinion that the SCN and the Hearing Notice have been duly served upon the Noticee but he has deliberately failed to reply towards the SCN and also failed in availing the opportunity of hearing in this matter. I am also of the view that principles of natural justice have been duly followed in the instant matter. Therefore, the adjudication proceedings against the Noticee are undertaken *ex-parte* on the basis of material available on records.

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the instant matter are:
 - 11.1 Whether the Noticee had failed to make required disclosure under Regulation 13(4) read with 13(5) of the PIT Regulations as alleged in the SCN?

11.2 If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

11.3 If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

Issue 11.1 Whether the Noticee had failed to make mandated disclosure under Regulation 13(4) read with 13(5) of the PIT Regulations as alleged in the SCN?

12. Regulation 13(4) of the PIT Regulations requires any person, who is a director or officer of a listed company, to disclose to the company and stock exchange where the securities are listed, the total number of shares or voting rights held and change in shareholding or voting rights within two working days of acquisition or sale of shares or voting rights as the case may be, if there has been a change in such holdings of such person from the last disclosure made under Regulation 13(2) of the PIT Regulations, or under Regulation 13(4) of the PIT Regulations, and the change exceeds Rs. 5 lakhs in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

13. I have independently perused the Company / LLP Master Data with respect to the Company as available on the website of Ministry of Corporate Affairs. On perusal of the same, I note that the Noticee (Director Identification Number - 03611510) has been a director of the Company since July 07, 2014. Thus, I note from the aforesaid that the Noticee was a director of the Company during the Examination Period.

14. I also note that the BSE, vide letter dated January 12, 2015, had provided following details of trades carried out by the Noticee in the scrip of Company:

Sr . N o.	Tra de dat e	Client Name	Boug ht Qty	Buy Rate	Sold Qty	Sold Rate	Buy value	Sold value

1	23-Jul-2014	Amitkumar Rameshchandra Rana	11000	175.00	0	0.00	1925000.00	
2	24-Jul-2014	Amitkumar Rameshchandra Rana	0	0.00	11000	176.44		1940807.30
3	25-Jul-2014	Amitkumar Rameshchandra Rana	34853	176.28	0	0.00	6143974.40	
4	01-Aug-2014	Amitkumar Rameshchandra Rana	19505	137.40	0	0.00	2679987.00	1527191.28
5	07-Oct-2014	Amitkumar Rameshchandra Rana	76436	19.97	76436	19.98	1526426.92	

15. On perusal of the table reproduced in paragraph hereinabove, I observe that the shareholding of the Noticee in the Company changed multiple times during the Examination Period, value of which exceeded Rs. 5 lakhs. The aforesaid change in shareholding during the Examination Period required disclosures to be made by the Noticee to the Company and to the BSE in terms of Regulation 13(4) of the PIT Regulations.

16. I note from Annexure 2 of the SCN that the BSE had confirmed vide letter dated August 28, 2014 that it did not receive any disclosures from the Noticee under PIT Regulations in the scrip of the Company. Additionally, I have verified from the website of the BSE

that no disclosures for the change in Noticee's shareholding in the Company during the Examination Period were available. I also note that the Company did not file any response to the e-mail from SEBI ascertaining whether the Noticee made any disclosures to the Company in terms of Regulation 13(4) read with 13(5) of the PIT Regulations. Also, the Noticee failed to file any reply towards the SCN.

17. In view of the aforesaid, it is established that the Noticee had failed to make disclosures as required under Regulation 13(4) read with 13(5) of the PIT Regulations to the BSE and the Company in respect of change in its shareholding in the Company during the Investigation Period.

Issue 11.2 If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

18. I have taken into account the well-known judgment of the Hon'ble Supreme Court in the matter of ***The Chairman, SEBI v. Shri Ram Mutual Fund*** [2006] 68 SCL 216, wherein it was held that, *"In our considered opinion, penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of parties committing such violations becomes wholly irrelevant"*.

19. In view of the aforesaid, I am convinced that the failure of Noticee in making disclosures to the Company / Stock Exchange under Regulation 13(4) read with 13(5) of the PIT Regulations attracts imposition of monetary penalty on the Noticee under Section 15A (b) of the SEBI Act, text of which is reproduced as under:

"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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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."

Issue 11.3 If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

20. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, I have considered 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.”

21. Investigation did not reveal any specific disproportionate gains or unfair advantage made by the Noticee or specific loss suffered by the investors. No past default against the Noticee was revealed in the investigation report. However, I note that the Hon'ble Securities Appellate Tribunal in the matter of **Komal Nahata v. Securities and Exchange Board of India** (Appeal No. 5 of 2014 dated January 27, 2014) has held, “Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.” Correct and timely disclosures, therefore, are an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision.

22. Taking into account aforesaid facts and circumstances of the case, mitigating factors, judgments relied on and the purpose of the PIT Regulations, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

23. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 4,50,000/- (Rupees Four Lakh Fifty Thousand only) upon the Noticee, i.e. Mr. Amitkumar Rameshchandra Rana under Section 15A(b) of the SEBI Act for violation of Regulation 13(4) read with 13(5) of the PIT Regulations. I am of the view that the said penalty would commensurate with the violation committed by the Noticee.
24. The Noticee shall remit / pay the said amount of penalty 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 through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
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

25. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of the SEBI. The format for forwarding details of e-payments shall be made in the following tabulated form as provided in the 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.

Date	Department of SEBI	Name of Intermediary /	Type of Intermediary	SEBI Registration	PAN	Amount in Rs.	Purpose of Payment	Bank name and Account	UTR No.
------	--------------------	------------------------	----------------------	-------------------	-----	---------------	--------------------	-----------------------	---------

		Other entities		Number (if any)			(including the period for which payment was made e.g. quarterly, annually etc.)	nt number from which payment is remitted	
--	--	----------------	--	-----------------	--	--	---	--	--

26. Copies of this Adjudication Order are being sent to the Noticee and also to the SEBI in terms of Rule 6 of the Adjudication Rules.

Date : February 21, 2018

Place : Mumbai

(Rachna Anand)
Adjudicating Officer