BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BD/AB/2020-21/9454]

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

Arihant Superstructures Limited
(PAN: AABCS1848L)

In the matter of
Arihant Superstructures Limited

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination of non-disclosures under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations**") in the scrip of Arihant Superstructures Limited during the period May 1, 2016 to May 31, 2018 on the basis of a letter dated September 14, 2018 sent by Arihant Superstructures Limited (hereinafter referred to as "**ASL / Company/ Noticee**") wherein the Noticee informed about certain non-compliances and violations observed with regard to the PIT Regulations and ASL's Code of conduct by Shri Dinesh Babel ("**DB**") who was an Independent Director of the Company and by Dinesh Mohan Babel HUF which was a specified person under Noticee's code of conduct as Dinesh Babel was its Karta. During examination it was noticed that ASL failed to make requisite disclosures under Reg. 7(2)(b) of the PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer in the matter vide communique dated October 29, 2019 to inquire into and adjudge under the provisions of section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') under the provisions of section 15A(b) of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice dated September 9, 2020 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15A(b) of the SEBI Act, for the violations alleged to have been committed by the Noticee. The SCN issued to the Noticee, *inter-alia,* alleged that the Noticee was aware of the transactions done by DB but failed to disclose it to the exchanges.
4. It was observed from the trading of DB and his HUF that DB had traded in shares of ASL in excess of Rupees Ten Lakh on 2 occasions, warranting a disclosure under Reg. 7(2)(a) of PIT Regulations and DB's HUF had traded in excess of rupees Ten Lakh on 4 occasions, warranting a disclosure under Regulation 7(2)(a) of PIT Regulations. As per information given by the Noticee to SEBI, it became aware of these transaction while reconciling the holding data with RTA and this data was put up before the Board of Directors in the meeting held on August 10, 2018.
5. Thus, it was alleged that the Noticee became aware of the transaction atleast before August 10, 2018. However, no disclosure was made to exchanges about the same in terms of Reg. 7(2)(b) of the PIT Regulations.
6. The SCN was digitally signed and sent by e-mail to the Noticee. The Noticee vide e-mail September 23, 2020 sought 30 days' time to reply to SCN. Vide e-mail dated September 25, 2020, the Noticee was advised to file reply to the

SCN by October 12, 2020. Since no reply came till October 12, the Noticee was granted an opportunity of personal hearing on October 23, 2020 by e-mail dated October 12, 2020. The Noticee subsequently, submitted its reply by email dated October 12 and 13, 2020. The authorized representatives of the Noticee appeared for hearing on the scheduled date by video conferencing.

7. A summary of the submissions made by the Noticee are as follows:
   i. ASL submitted a detailed report on violation of PIT Regulations and ASL code of conduct by DB when it came to know about the said violation voluntarily on September 21, 2018.
   ii. The Company could not make disclosures since it did not receive relevant disclosures from DB under Reg. 7(2)(a) of the PIT Regulations. The Noticee has made the disclosures on October 12, 2020 after receiving all the details.
   iii. A detailed report on violations by DB has been submitted to exchanges on September 14, 2018.
   iv. A penalty of Rs. 1,50,000 has been recommended on DB and disgorgement of Rs. 3,37,254/- has also been done.

CONSIDERATION OF ISSUES

8. I have carefully perused the charges levelled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration in the present case are :
   (a) Whether the Noticee has violated the provisions of Regulation 7(2)(b) of the PIT 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 quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?
9. Before proceeding further, I would like to refer to the relevant provisions of the PIT Regulations as below:

PIT Regulations, 2015

Continual Disclosures.
7 (2) (a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;
(b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

10. I find that the disclosure requirements under the PIT Regulations are triggered when the Company receives the disclosure or becomes aware of information regarding transactions warranting disclosures under Reg. 7(2)(a). In the instant case, DB did not make any disclosures to the Noticee even though he was required to make the same and accordingly the Noticee couldn't have made the disclosures when the transactions happened. However, when the Noticee was reconciling data with Registrar and Transfer Agent, it became aware of the transactions of DB. The details received from RTA would have indicated the details of transaction of DB and the Noticee could have easily calculated the value of transactions since the price of its shares are available in public domain. The apparent purpose of imposing additional responsibility on the Listed Company under Reg. 7(2)(b) is to ensure that even if the persons responsible under Reg. 7(2)(a) don't make the requisite disclosures, the Company must make the information public as soon as it becomes aware of the same. In the instant case, the Noticee discussed the transactions in the meeting of Board of directors and constituted a committee to examine the violations by DB. The constitution of Insider Trading Compliance Committee was disclosed to the exchanges on August 10, 2018. However, the Noticee failed to make the disclosures showing the transaction of DB and his HUF. The fact that the Noticee disclosed formation of the committee or its report will not discharge the Noticee from obligation to make disclosures under Reg. 7(2)(b). I have also perused the disclosure made on September 14, 2018 regarding outcome of Insider Trading Compliance Committee which was made by the Noticee to the

exchanges. It can be seen from the said communication that the committee found DB guilty of violation and recommended imposition of penalty on DB. However, the details of transactions of DB haven't been mentioned anywhere in the said communication. Thus, even if the communication was disseminated by the Exchanges, it wouldn't have served the purpose of making the transactions of DB public. Further, the Noticee itself has accepted the fact that it has made the relevant disclosure on October 12, 2020 i.e. more than 2 years after it became aware of the transactions.

11. Thus, it can be concluded that the Noticee has violated Reg. 7(2)(b) of PIT Regulations.

12. In this context, I observe that the Hon'ble SAT has consistently held that the obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed 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 had 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.*"

13. I further observe that 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*".

14. In view of the violation of the provisions of law by the Noticee, as established above, the Noticee is liable for monetary penalty 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 there under-***
>
> *(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.*

15. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.*

16. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the concerned department of SEBI 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. As a mitigating factor, I also note that the Company itself had informed the exchanges and SEBI about the violations done by DB and had also recommended imposition of penalty and got the amount of profit disgorged from DB. Thus, it can be said that the Noticee itself was taking corrective actions on receipt of information relating to violations of PIT Regulations.
17. I am also of the view that the disclosure requirements that have been prescribed under PIT Regulations are of utmost significance for the protection of interest of the investors, as such information received by them in a time bound manner

would facilitate them to take an informed investment decision as regards their holdings in the Company. 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.

ORDER

18. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹2,00,000/- (Rupees Two Lakhs only) on the Noticee under the provisions of Section 15A(b) of the SEBI Act.
19. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. 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 by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html
20. The Noticee shall forward said Demand Draft to the Enforcement Department – Division of Regulatory Action– IV of SEBI. The Noticee shall provide the following details while forwarding the Demand Draft:
    i. Name and PAN of the entity (Noticee)
    ii. Name of the case / matter
    iii. Purpose of Payment – Payment of penalty under AO proceedings
    iv. Bank Name and Account Number
    v. Transaction Number
21. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: October 27, 2020
Place: Mumbai

B.J. Dilip
ADJUDICATING OFFICER