

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
(ADJUDICATION ORDER NO: AO/SBM/EAD-1/320/2018)**

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**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 BY ADJUDICATING OFFICER) RULES, 1995.**

*In respect of:*

**Aashish Developer  
(PAN: AAQFA3264Q)**

209, Abhi Shree,  
Opp Star Bazar,  
Shiv Ranjani Char Rasta,  
Satellite, Ahmedabad,  
Gujarat – 380015

*In the matter of*

**SMS Techsoft (I) Ltd.**

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') noticed that during the period February - March 2013, several Short Text Messages (SMSs) were sent to investors, with predominantly buy recommendations that were made in the scrip of SMS Techsoft (India) Ltd (hereinafter referred to as '**STL**'/ '**Company**'). In view of the SMSs mentioning predominantly buy recommendations in the scrip of STL, SEBI conducted an examination in the matter and based on the observations contained therein, an interim order dated November 05, 2013 (followed by a corrigendum dated November 18, 2013) was passed against 38 persons/entities wherein, the 38 persons/entities named in the interim order were, *interalia*, restrained from accessing securities market and also prohibited from buying, selling or dealing

in the securities market either directly or indirectly in any manner whatsoever till further directions.

2. Thereafter, SEBI undertook an investigation in the matter for the period March 13, 2013 to November 05, 2013 (hereafter referred to as '**investigation period**'/ '**relevant period**') and consequent to the completion of investigation, enforcement proceedings were initiated by SEBI against the persons/entities and also against Aashish Developer (hereinafter referred to as '**Noticee**'). It was observed during the course of investigations that Noticee has failed to make the relevant disclosures under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the '**PIT Regulations**') and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the '**SAST Regulations**') w.r.t its acquisition of shares of STL during the relevant period.
3. It is observed that STL was listed only on Bombay Stock Exchange (**BSE**) during the relevant period and the total paid up capital of the Company during the relevant period was 35,05,72,000 shares of face value Rs. 1/-. It is alleged that the Noticee failed to make disclosures to the Company and to the BSE which was required to be made under the relevant provisions of SAST Regulations and PIT Regulations, within the stipulated time period, when the shareholding of the Noticee in STL crossed the threshold limit of 5% due to its acquisition of shares of STL on October 21, 2013. In view of the aforesaid failure on the part of the Noticee to make relevant disclosures to the Company and BSE, as mentioned above, it is alleged that Noticee has violated the provisions of Regulation 13(1) of the PIT Regulations and Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations. In view of the above observations, adjudication proceedings were initiated against the Noticee under the provisions of Section 15 A (b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. The undersigned was appointed as the Adjudicating Officer ('**AO**') vide an order dated October 11, 2017 under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15A(b) of the SEBI Act, the alleged violation of the aforementioned provisions of the SAST Regulations and PIT Regulations by the Noticee.

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

5. Show Cause Notice ref. A&E/EAD-3/SBM/32493/2017 dated December 21, 2017 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty, if any, be not imposed on the Noticee for its alleged failure to make the necessary disclosures under Regulation 13(1) of the PIT Regulations and Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations with regard to the Noticee's transactions in the scrip of STL on October 21, 2013.
6. The allegations levelled against the Noticee in the SCN are summarized as under:

*(a) Further, it is observed from the trade data provided by the BSE that the Noticee has acquired shares in STL aggregating to more than five percent of the shares of total share capital of company during the investigation period, the details of the transactions are mentioned as under-*

*Table-I Details of changes in the shareholding of Aashish Developer*

**Details of changes in shareholding of Aashish Developer**

<b>Sr. No .</b>	<b>Date of transaction</b>	<b>No. of shares transacted</b>	<b>Type of Transaction</b>	<b>Shareholding post transaction</b>	<b>% Shareholding post transaction</b>	<b>Disclosures required under Regulations</b>
1	18/10/2013	4,01,523	Buy	94,91,423	2.71%	-
2	21/10/2013	1,00,00,000	Buy	1,94,91,423	5.56%	13 (1) of PIT Regulations 29(1) r/w 29(3) of SAST Regulations

(b) Hence, Noticee was under an obligation to make the necessary disclosures under Regulation 29 (1) read with Regulation 29 (3) of SAST Regulations w.r.t its respective acquisitions to the BSE and also to the Company within two working days of the acquisition of shares. It is alleged that the Noticee had failed to make disclosures to BSE and to the Company within the prescribed time period and therefore, has violated the provisions of Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011.

(c) It is further observed that the acquisition of more than 5% shares of the Company by Noticee also entailed him to make initial disclosure to the company under the provisions of Regulation 13(1) of PIT Regulations within two working days of the acquisition of shares. However, Noticee had failed to make the disclosures under the relevant provisions of the PIT Regulations. Therefore, it is alleged that the Noticee, by failing to make the disclosures to the Company within the prescribed time period has violated the provisions of Regulation 13(1) of PIT Regulations, 1992.

(d) Therefore, Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act.

7. The SCN issued to the Noticee as per its addresses on record, returned undelivered with comments “*Left*”. Further, letters dated April 23, 2018 and May 30, 2018 were sent to the Noticee which also returned undelivered with the remarks “*Left*” and “*Not Known*”. Thereafter, in the interest of natural justice, vide letter dated August 06, 2018, Noticee was granted an opportunity of personal hearing on August 24, 2018 at SEBI, Western Regional Office, Ahmedabad. On the stipulated date of hearing i.e. on August 24, 2018, Mr. Deepak Shah (Advocate & Authorised representative (**AR**)) appeared for the hearing on behalf of the Noticee. During the course of hearing, the facts of the case leading to the current proceedings and details of the letters sent to the Noticee’s address in this regard were brought to the notice of the AR. Upon the specific request made by the AR, a copy of the SCN which was issued to the Noticee was also provided to him with specific instructions to the Noticee to file/make written submissions within 15 days of the aforementioned hearing date i.e. August 24, 2018. However, it is on record that Noticee has failed to submit/furnish any reply, in respect of the SCN, till date.

8. In this context, I would like to place reliance on the Order dated February 11, 2014 passed by the Hon’ble Securities Appellate Tribunal (**SAT**) in the matter of Sanjay Kumar Tayal and Ors vs SEBI (Appeal No 68 of 2013), wherein Hon’ble SAT had observed that “..... *As rightly contended by Mr Rustomjee, the learned senior counsel for respondents, appellants have neither filed any reply to the 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 the charges leveled against them in the show cause notices .....*”

In view of the above reasons, I am compelled to proceed further in the matter against the Noticee on the basis of facts/material available on record.

### **CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS**

9. I have carefully perused the facts and circumstances of the case, the material made available on record and the allegations against the Noticee. It is alleged that Noticee has violated the provisions of Regulation 13(1) of the PIT Regulations and Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations with regard to its acquisition of shares of STL on October 21, 2013, which resulted in the total shareholding of the Noticee crossing the threshold limit of 5% of the total share capital of the Company.
10. Before dealing with the aforesaid charges in seriatim, the relevant legal provisions, the contraventions of which have been alleged in this case against the Noticee are mentioned as under:

The text of the relevant provisions of SAST Regulations and PIT Regulations, are reproduced hereunder-

#### **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*

*(2)....*

*(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.*

#### **PIT Regulations, 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 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.

11. The issues for examination in this case and the findings thereon are as follows:-

**Whether the Noticee has violated the provisions of Regulations 29(1) r/w 29(3) of the SAST Regulations and Regulation 13(1) of PIT Regulations with regard to its transaction in the scrip of STL during the relevant period?**

12. As per the material made available and the trade data provided by the BSE, it is observed that Noticee has crossed the threshold limit of 5% of the total share capital of the Company on October 21, 2013. It is also observed that the aforesaid transaction was a market transaction. The details of the change in shareholding of the Noticee in the scrip of the Company, which was also provided to the Noticee through the SCN are as follows:

Sr. No.	Date of transaction	No. of shares transacted	Type of Transaction	Shareholding post transaction	% Shareholding post transaction	Disclosures required under Regulations
1	18/10/2013	4,01,523	Buy	94,91,423	2.71%	-
2	21/10/2013	1,00,00,000	Buy	1,94,91,423	5.56%	13 (1) of PIT, 1992 and 29(1) r/w 29(3) of SAST, 2011

13. It is noted from the SCN that the Noticee acquired 1,00,00,000 shares of the Company on October 21, 2013 which led to increase in its shareholding in the Company from 2.71% to 5.56% of the total share capital of the Company. I note that the disclosure requirements under the SAST Regulations and PIT Regulations are triggered when an entity's shareholding in a company crosses the threshold limit of 5% of the total share capital of the company. In the instant

matter, I find from the material on record that the Noticee was holding 94,91,423 shares of STL as on October 20, 2013. I also observe that the Noticee had purchased 1,00,00,000 shares of STL on October 21, 2013, which resulted in Noticee's shareholding in STL crossing the threshold limit of 5% of the total share capital of the Company. The shareholding of the Noticee in STL increased from 2.71% to 5.56% as on October 21, 2013 as a result of its transaction in the scrip of STL on October 21, 2013. Therefore, the Noticee was required to make the necessary disclosures to the Company and to BSE in the prescribed reporting format within two working days of its acquisition of shares in terms of Regulations 29(1) and 29(3) of the SAST Regulations. Further, the Noticee was also required to make the disclosures in the prescribed format (Form A) to the Company within two working days of its acquisition of shares in terms of Regulation 13(1) of the PIT Regulations.

14. I find from the records made available that the Noticee has failed to make the necessary disclosures under Regulation 29(1) r/w Regulation 29(3) of SAST Regulations and also failed to make disclosures to the Company under Regulation 13(1) of the PIT Regulations. The same is evident from the details of the disclosure of shareholding mentioned in the website of BSE. I further note that BSE in its email dated May 18, 2015, which was addressed to SEBI, confirmed the fact that Noticee had not made the required disclosures under SAST Regulations and PIT Regulations w.r.t. transactions mentioned above. Further, a letter dated March 15, 2016 sent to the Company by SEBI seeking confirmation regarding the disclosures made by the Noticee under the aforementioned Regulations also did not elicit any response. There is nothing on record / material made available on file to show that Noticee had made the necessary disclosures under the aforementioned Regulations. Therefore, I hold that the Noticee has violated the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations



15. In this context, the Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI*, had observed the following:--

*"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 the 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."*

16. Further, it is also relevant to quote the observations made by Hon'ble SAT in its order dated September 04, 2013 in the matter of *Vitro Commodities Private Limited Vs SEBI* wherein 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 the 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"*.

17. In light of the above observations of Hon'ble SAT, I am of the view that the violation of Regulation 13(1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations by the Noticee are not substantially different. Therefore, I am of the view that the violation of Regulation 29(1) of the SAST Regulations and Regulation 13(1) of the PIT Regulations by the Noticee can be considered as a single violation in the context of the present proceedings and for the purpose of imposition of monetary penalty.

18. As the violations of the statutory obligation under Regulation 29(1) r/w Regulation 29(3) of SAST Regulations and Regulations 13(1) of the PIT

Regulations by the Noticee have been established, I hold that Noticee is liable for monetary penalty under the provisions of section 15 A (b) of the SEBI Act, which reads as under :

***Penalty for failure to furnish information, return etc***

*15 A -If any person, who is required under this Act or any rules or regulations made thereunder-*

*(a).....*

*(b) to file any return or furnish any information, books or other documents within the time specified thereof in the regulations, fails to file return or furnish the same within the time specified thereof in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues*

*(c).....*

19. While determining the quantum of penalty under section 15A (b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under :

***“15 J- Factors to be taken into account by the adjudicating officer***

*While adjudging the 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”*

20. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default committed by the Noticee is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of the default by the Noticee, the details of the shareholding of the Noticee and the timely disclosures thereof, were of significant importance from the point of view of the investors as that would have prompted them to buy or sell shares of the company. The disclosure obligation mandated under the SAST Regulations and PIT Regulations are critical and important component of the legal regime

governing substantial acquisition of shares and takeovers. In the absence of these timely disclosures, the investors will be deprived of the important information at the relevant point of time.

## ORDER

21. After taking into consideration all the facts and circumstances of the case, material on record and the above mentioned observations of Hon'ble SAT in the matter of Vitro Commodities Private Limited Vs SEBI, 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 penalty on the Noticee viz. Aashish Developer, as under:

Name of the Noticee	Violations committed by Noticee	Penal provision	Penalty
Aashish Developer	Regulations 29(1) r/w 29(2) of SAST Regulations, 2011 and;  Regulation 13(1) of PIT Regulation 1992 r/w Regulation 12 of SEBI ( Prohibition of Insider Trading) Regulations, 2015	Section 15 A (b) of SEBI Act, 1992	Rs. 2,00,000/-  (Rupees Two Lakh only )

I am of the view that the said penalty is commensurate with the default committed by the Noticee.

22. The Noticee shall remit / pay the said amount of penalty within 45 days of the 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

23. The Noticee shall forward the said Demand Draft or the details/ confirmation of penalty so paid through e-payment (in the format given in the table below) to “The Division Chief, Enforcement Department (**EFD DRA-II**), Securities and Exchange Board of India, SEBI Bhavan, Plot No C-4A, ”G” Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051” .

1. Case Name:	
2. Name of the 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)	

24. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this Order is sent to the Noticee viz. Aashish Developer and also to SEBI.

**Place: Mumbai**

**Date: September 28, 2018**

**SURESH B MENON**

**ADJUDICATING OFFICER**