

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. EAD-12/SM/178-181/2018]**

**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:  
**Minal Patel (PAN: AACPP5126G)  
Ruchit Patel (PAN: ANDPP9202F)  
Hardik Patel (PAN: AHIPP1407H)  
Bharat Patel (PAN: AAAPP6652R)**

**In the matter of M/s. Super Sales India Ltd**

**Facts of the Case:**

1. Securities and Exchange Board of India ("SEBI") pursuant to examination of the scrip M/s. Super Sales India Ltd (hereinafter referred to as "Company") had observed that:
  - 1.1 Minal Patel, Ruchit Patel, Hardik Patel and Bharat Patel (hereinafter referred to as "Noticee No. 1, 2, 3 and 4 respectively") had violated Regulation 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (hereinafter referred to as "SAST Regulations") and
  - 1.2 Noticee No.1 had also violated Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as 'PIT 1992') read with Regulation 12(2) of PIT 2015.
2. The shares of the company are listed on Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**") and National Stock Exchange (hereinafter referred to as "**NSE**").
3. In this order wherever PIT 1992 is mentioned it should be referred to as PIT 1992 read with Regulation 12(2) of PIT 2015.
4. SEBI's Surveillance Department has observed that Noticee No. 1 was holding 2,02,177 shares of the company (constituting 6.58% of the paid up share capital) as on December 31, 2013 and the shareholding of the Noticee No. 1 has changed by more than 2% as on April 30, 2014 (constituting 2.64% of the paid up capital of the company). In the light of the above, Noticee 1 was required to make disclosure under 13(3) read with 13(5) of the PIT 1992. However it was alleged that Noticee 1 did not make disclosure in this regard and hence she violated Regulation 13(3) read with 13(5) of PIT 1992.
5. It was alleged that all Noticees were PAC which was also confirmed by Noticee No. 3 in his email to SEBI dated January 22, 2015 wherein he stated the following:

Name	Relationship with Noticee No. 3
Noticee -1- Minal Patel	Mother
Noticee -2- Ruchit Patel	Brother
Noticee -3- Hardik Patel	Self
Noticee -4- Bharat Patel	Father

6. The change in shareholding of Noticees are placed below:

<b>Date of Disposal of shares</b>	<b>Quantity Disposed</b>	<b>% of holding of PACs post transaction</b>	<b>% change</b>
31/12/2013	Opening balance	13.32%	NA
12/02/2014	3,22,136	10.49%	2.83%
06/03/2014	2,40,950	7.84%	2.65%

7. It was alleged that for the above change of more than 2% in shareholding, PACs did not made disclosure under Regulation 29(2) of SAST REGULATIONS.
8. Vide email dated March 05, 2015 to SEBI, BSE has confirmed that it had not received any disclosure for the aforesaid changes in shareholding during the period January 01, 2014 to April 30, 2014 from the Noticees. Further, the disclosure available on NSE website states that the disclosure was received on August 11, 2016 in this regard. Therefore, it was alleged that Noticee No. 1, 2, 3 and 4, has violated Regulations 29(2) of the SAST Regulations.
9. Noticees were, therefore, called upon to show cause as to why an inquiry should not be held against Noticee in terms of Rule 4 of SEBI Adjudication Rules read with Section 15I (1) of SEBI Act and penalty be not imposed under Section 15A (b) of SEBI Act for the alleged contravention of the provisions of SAST and PIT Regulations, as aforesaid.

#### **Appointment of Adjudicating Officer**

10. SEBI had initiated adjudication proceedings against Noticees and undersigned was appointed as Adjudicating Officer vide order dated May 18, 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 SEBI Act for the alleged violation Regulation 29(2) of SAST Regulations by Noticee No. 1, 2, 3, 4 and Regulation 13(3) read with 13(5) of PIT 1992 by Noticee 1.

#### **Show Cause Notice, Reply and Personal Hearing**

11. Based on the findings, Show Cause Notice ('SCN') dated December 04, 2017 was issued to all the Noticees. SCN was duly delivered at addresses of all the Noticees.
12. Noticee No. 1 vide letter dated January 03, 2018 requested for four weeks' time to respond and the request was acceded to.

#### **Hearing:**

13. In order to comply with the principles of natural justice, an opportunity of personal hearing was granted to the Noticees on February 05, 2018. Although the notice was delivered to all the Noticees, no one appeared on the scheduled date of hearing.
14. Another opportunity of personal hearing was given to the Noticees on February 16, 2018.
15. Noticee No. 1 vide letter and email dated February 08, 2018 had requested for documents relied upon to which Noticee No. 1 was informed via e-mail dated February 09, 2018 to

come and collect the documents on February 12, 2018 but no one came to collect the documents.

16. Noticee No. 4 has appeared on February 16, 2018 and represented himself and on behalf of other Noticees and submitted a written submission inter alia stating:

- a. *At the further outset, we fail to appreciate how the provisions of Regulation, 13(3) read with Regulation 13(5) of SEBI PIT Regulations would be attracted against Mrs. Minal B Patel as she is neither a 'connected person' or an 'insider' within the meaning and scope of the said PIT Regulations. We submit that invoking the provisions of SEBI PIT Regulations against Mrs. Minal B. Patel is not proper, fair or legal. We deny that the provisions of SEBI PIT Regulations as stated in SCN are applicable to Mrs. Minal B Patel in the above matter.*
- b. *We have been advised that the SEBI PIT Regulations, 1992 were repealed and replaced by the SEBI PIT Regulations, 2015. Therefore we have been further advised that it would not be just, fair, proper or legal for SEBI to now issue Show Cause Notice under the 2015 Regulations and/or initiate any fresh action in view of certain technical lapses or default that may have been made under the repealed Regulations.*
- c. *With reference to paragraph 3, 4 and 5, we submit that we have filed necessary disclosures for holding and change of holding and copy of the same duly receipted by Exchange. It is stated that these disclosure were done immediately upon knowledge that we have missed to submit the same in time due to lapse of employee who is entrusted to ensure compliance. It is not disputed that all Noticees are family members are though independent but are person acting in concert.*
- d. *We may also point out that immediately on becoming aware of alleged lapse on our part (much prior to issuance of SCN), we had immediately taken corrective steps and filed/made the requisite disclosures.*

### **Consideration of Issues, Evidence and Findings**

17. I have carefully perused the charge levelled against Noticees 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 No. 1, 2, 3 and 4 has violated Regulation 29(2) of SAST Regulations?**
- II. Whether Noticee No. 1 has violated Regulation 13(3) read with 13(5) of PIT 1992**
- III. Does the violation, if any, on the part of Noticees attract monetary penalty under Section 15A (b) of the Act?**
- IV. If so, what would be the quantum of monetary penalty that can be imposed on Noticees taking into consideration the factors mentioned in Section 15J of the Act?**

18. 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:**

***Disclosure of acquisition and disposal***

*29(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.*

**Relevant provisions of PIT Regulation 1992**

***Continual disclosure.***

*13. (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation*

*(1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

*(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.*

**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 thereunder, 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*

**Findings:**

19. I have carefully perused the allegations levelled in the SCN and the replies submitted by the Noticees .I note that all Noticees have accepted that they have not made disclosure under Regulation 29(2) within the specified time frame. I note that Noticee had made disclosure in this regard on August 11, 2016. Hence it is concluded that Noticees have violated Regulation 29(2) of SAST Regulations.

20. I do not find any merit in the submission of the Noticee 1 that since she was not connected person or insider as PIT 1992, hence she was not under any obligation to make disclosure

under Regulation 13(3) read with 13(5) of PIT 1992. Regulation 13(3) of PIT 1992 mandates every one whose shareholding exceeds 5% (irrespective whether that person is connected or insider or not) is obligated to make disclosures for any change of 2% or more in his shareholding. Noticee 1 was under an obligation to make disclosure about her change in shareholding under Regulation 13(3) read with 13(5) of PIT 1992 and since she has not made disclosure and hence she has violated the said provisions of law.

21. Noticees have contended that since SEBI PIT Regulations, 1992 were repealed and replaced by the SEBI PIT Regulations, 2015 and that it would not be just, fair, proper or legal for SEBI to now issue Show Cause Notice under the 2015 Regulations and/or initiate any fresh action in view of certain technical lapses or default that may have been made under the repealed Regulations. I find this objection not tenable as Regulation 12(2) of PIT 2015 deals with "Repeal and Savings" and issues arising due to repeal of PIT 1992 is duly addressed therein

22. Further, I do not find any merit in the submissions of the Noticees that the non-disclosures were unintentional and not willful. Also, I do not find any merit in the submissions of the Noticees that they have not made any illegal or undue profits. In this context, I note that the Hon'ble Securities Appellate Tribunal in the matter of **Komal Nahata Vs. SEBI** vide order dated January 27, 2014 has observed that:

*"Argument that no investor has suffered on account of nondisclosure 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 nondisclosure."*

23. Further, I also note that in Appeal No. 78 of 2014 in the case of **Akriti Global Traders Ltd. Vs. SEBI**, the Hon'ble Securities Appellate Tribunal vide order dated September 30, 2014 has 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".*

24. In view of the above, I conclude that the Noticee 1 by not making the necessary disclosures and Noticee 1-4 by making delay disclosure, have violated the following provisions of law which warrants imposition of monetary penalties as prescribed under Section 15A (b) of the SEBI Act, 1992:

- I. Noticees 1, 2, 3 and 4 have violated the provisions of Regulation 29(2) of the SAST Regulations
- II. Noticee 1 has violated the provisions of Regulation 13(3) read with 13(5) of PIT 1992.

25. The Hon'ble Securities Appellate Tribunal, in Appeal No.66 of 2003 order dated April 15, 2005 - **Milan Mahendra Securities Pvt. Ltd. Vs SEBI**, has also observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature"*.
26. 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..."*.
27. 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.*
28. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. I note that the default of the Noticees are 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. I, therefore, conclude that the Noticees, by failing to make the necessary disclosures as required under the SAST Regulation and PIT Regulations 1992 are liable for monetary penalties under the SEBI Act, 1992.

## ORDER

29. 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 Noticees:

Noticee No.	Name of the Noticee	Provisions of Law Violated	Penalty Provision	Penalty Amount (in Rs.)
1	Minal Patel	Regulation 13(3) read with 13(5) of PIT 1992 read with 12 of PIT 2015	Section 15A(b) of the SEBI Act	2,00,000 (Two lakhs only)
1	Minal Patel	Regulation 29(2) of SAST Regulations		4,00,000 (Four Lakhs) Jointly and severally
2	Ruchit Patel			
3	Hardik Patel			
4.	Bharat Patel			

30. Noticees 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

31. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to " General Manager (Enforcement Department - DRA- I), Securities and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052.

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)	

32. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

**Date: February 22, 2018**  
**Place: Mumbai**

**SAHIL MALIK**  
**ADJUDICATING OFFICER**