

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. NP/SJ/AO-03/2016]

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

Mrs. Nilam Anjaria

(PAN AEPPA9386Q)

In the matter of Dynacons Systems and Solutions Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') examined the trading activities of certain entities in the scrip of Dynacons Systems and Solutions Ltd. (DSSL / target company) for the possible violations of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'SEBI (PIT) Regulations') and Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'SEBI (SAST) Regulations'). The said examination, inter-alia, revealed that Mrs. Nilam S Anjaria (hereinafter referred to as 'noticee') has not made disclosures under Regulations 13(1), 13(4A) read with 13(5) of SEBI (PIT) Regulations and Regulations 29(1) read with 29(3) of SEBI (SAST) Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said examinations, SEBI initiated Adjudication Proceedings against the noticee and appointed the undersigned as Adjudicating Officer, vide order dated March

01, 2016, under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'AO Rules') to enquire into and adjudge under section 15A(b) of SEBI Act for the alleged violations of Regulations 13(1) and 13(4A) of SEBI (PIT) Regulations and Regulations 29(1) read with 29(3) of SEBI(SAST) Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show-cause notice EAD/AO-NP/VVK/11294/1/2016 dated April 18, 2016 (hereinafter referred to as SCN) was issued to the noticee under rule 4 of the AO Rules to show-cause as to why an inquiry should not be initiated against her and why penalty be not imposed on her under section 15A(b) of SEBI Act for the alleged violation specified in the said SCN. The SCN was sent through the speed post acknowledgment due and the same has been received by the noticee.
4. The shares of the DSSL are listed at The National Stock Exchange of India Ltd. (NSE) and Bombay Stock Exchange Ltd. (BSE). The noticee is the promoter of the DSSL and held 2,52,562 shares constituting 4.26% of the total shareholding in DSSL as on March 31, 2014. The noticee in total bought 57,040 shares constituting 0.96% of the total shareholding in DSSL during the investigation period i.e. April 01, 2014 to December 15, 2014. The shareholding of the noticee crossed 5% limit on July 02, 2014 when she purchased 10,000 shares of DSSL and hence, the noticee was required to make disclosures under Regulation 13(1) of SEBI (PIT) Regulations to the DSSL within two working days of the said acquisition and under Regulation 29(1) read with 29(3) of SEBI (SAST) Regulation to the DSSL, BSE and NSE within two working days of the said acquisition. Further, it was alleged that the noticee being the promoter of DSSL who in total bought 57,040 shares of DSSL from June 20, 2014 to July 25, 2014 constituting 0.96% of total shareholding was required to make disclosure on two occasions under Regulation 13(4A) of SEBI (PIT) Regulations to DSSL, BSE and NSE. It was alleged that the noticee failed to make disclosures under SEBI (PIT) Regulations and SEBI (SAST) Regulations.

5. The noticee was given fifteen days' time to make submission against the SCN. The noticee vide her letter dated April 26, 2016 sought time till June 10, 2016 to file her reply to the said SCN. The noticee did not file reply to the SCN by June 10, 2016. However, an opportunity of personal hearing was granted to the noticee on June 14, 2016. The noticee failed to appear on the said date and hence another opportunity of personal hearing was given to the noticee and she was asked to appear before me on July 04, 2016. The Authorised Representative (AR) of the noticee vide e-mail dated July 04, 2016 sought an adjournment of two weeks. In view of this, the noticee was asked to appear before me on July 19, 2016. On the said date, the ARs of the noticee appeared before me and submitted that the reply to the SCN shall be filed by July 22, 2016 and requested to adjourn the hearing to July 26, 2016. The noticee vide her letter dated July 22, 2016 filed her reply to the said SCN and personal hearing was conducted on July 26, 2016. During the personal hearing, the ARs reiterated the submissions made by her in the reply to the said SCN.
6. The notice / ARs in reply to SCN, inter-alia, submitted that:-

“Mrs. Nilam Shirish Anjaria is one of the promoters of the Company. On perusal of the shareholding pattern of the Company for the quarter ended March 31, 2014, we note that the Noticee held 2,52,562 shares of the Company i.e., the shareholding of the Noticee constituted 4.26% of the total shareholding of the Company (“Original Shareholding”). The subsequent change in shareholding of the Noticee is summarised as under:

Sr. No.	Date of acquisition	No. of shares acquired	No. of shares held prior to acquisition	No. of shares Post Acquisition	Increase in shareholding (in %)	Total shareholding post acquisition (in %)
Acquisition I						
1.	June 20, 2014	18,000	252,562	270,562	0.31	4.57
Acquisition II						
2.	June 23, 2014	10,420	270,562	280,982	0.18	4.75
Acquisition III						
3.	June 25, 2014	4,920	280,982	285,902	0.08	4.83
Acquisition IV						
4.	June 27, 2014	7,600	285,902	293,502	0.13	4.96

Sr. No.	Date of acquisition	No. of shares acquired	No. of shares held prior to acquisition	No. of shares Post Acquisition	Increase in shareholding (in %)	Total shareholding post acquisition (in %)
5.	July 2, 2014	10,000	293,502	303,502	0.16	5.12
<i>Acquisition V</i>						
6.	July 10, 2014	100	303,502	303,602	Negligible	5.12
<i>Acquisition VI</i>						
7.	July 11, 2014	4,000	303,602	307,602	0.07	5.19
<i>Acquisition VII</i>						
8.	July 25, 2014	2,000	307,602	309,602	0.04	5.23

Allegation of violations-wise submissions :

1. Alleged non-compliance of Regulation 13(1) and 13(4A) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (“SEBI PIT Regulations”)
 - i. Purported violation of Regulation 13(1) of SEBI PIT Regulations
 - a. On an analysis of the Regulation 13(1) of the SEBI PIT Regulations, we understand that any person who holds more than 5% shares or voting rights in any listed company is required to disclose to the Company, the number of shares or voting rights held by such person in the prescribed Form ‘A’ within two working days of either receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be.
 - b. We say that the obligation on the Noticee to make the disclosure to the disclosure under Regulation 13 (1) was triggered only once i.e. at the time of Acquisition IV defined above. We further say that the Noticee had made this disclosure to the Company in the prescribed Form A on July 2, 2014 i.e. within a period of 2 (two) working days of the increase in shareholding on July 2, 2014.
 - c. It is also pertinent to note that upon receipt of the aforesaid disclosure from the Noticee, the Company has also made the disclosure to the Stock Exchanges in the prescribed Form

D under Regulation 13 (6) of the SEBI PIT Regulations on July 3, 2014 i.e. within a period of 2 (two) working days from the date of receipt of such disclosure.

ii. *Purported violation of Regulation 13 (4A) of the SEBI PIT Regulations*

- a. *Regulation 13(4A) further inter alia stipulated that every person who is a promoter or forms part of the promoter group of a listed company is required to disclose change in its shareholding to the Stock Exchanges and the Company in the prescribed Form D, if there has been a change in its shareholding and only when:*
- *Rs. 5,00,000/- (Rupees five lakhs only) in value; or*
 - *25,000 number of shares; or*
 - *represents 1% of the total shareholding or voting rights of the Company,*
whichever is lower.
- b. *On perusal of the change in the shareholding of the Noticee as detailed in the table under paragraph A(3) above, we say that the Noticee was not required to disclose the change in Form D as at no stage has her shareholding increased by more than either:*
- *Rs. 5,00,000/- (Rupees five lakhs only) in value; or*
 - *25, 000 shares in numbers; or*
 - *Exceeds 1% of the total shareholding of the Company*
- c. *However, it may not be presumptuous on the part of the Noticee to point out that despite not being obligated to make any disclosure under Regulation 13(4A) of the SEBI PIT Regulations; the Company has voluntarily made a disclosure in the prescribed Form D to the Stock Exchanges.*

Accordingly, in view of what is stated above, the Noticee denies that it has not complied with the provisions of the SEBI PIT Regulations as alleged in the SCN

2. *Alleged non-compliance under Regulation 29(1) and Regulation 29(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“SAST Regulations”)*

- i. *The SAST Regulations were notified on September 23, 2011. For ease of reference, we have reproduced the Regulation 29 (1) of the SAST Regulations as under:*

“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.”
- ii. *A detailed analytical reading of Regulation 29(1) along with Regulation 29 (3) of the SEBI SAST Regulations 2011, leads me to an understanding that every acquirer is required to make disclosure to the stock exchanges and the Company of such acquisition which increases its shareholding along with the shareholding of the persons acting in concert exceeds by more than 5% of the total shares or voting rights of the Company.*
- iii. *The total shareholding of the Promoter and Promoter Group of the Company at the time of notification of the SEBI SAST Regulations was 29.67%. We say that the Noticee along with the persons acting in concert held more than 5% of the total shareholding of the Company before the notification of the SAST Regulations and thereby the Regulation 29 (1) thereunder.*
- iv. *Accordingly, since the Noticee and the persons acting in concert with the Noticee held more than 5% of the total shareholding or voting rights of the Company before the notification of the SAST Regulations, she was not obligated to make the purported disclosure under Regulation 29 (1) read along with the provisions of Regulation 29 (3) of the SAST Regulations.*

In view of the aforesaid, we say that the purported violation of Regulation 29 (1) read along with Regulation 29 (3) of the SAST Regulations is unjustified and the Noticee has never violated the provisions of Regulation 29 (1) read along with Regulation 29 (3) of the SAST Regulations. We humbly say that the alleged violations are unjustified as the Noticee is in full compliance of all the regulations discussed in the SCN. We therefore humbly request the Adjudicating Officer to quash / set aside the said SCN”.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges levelled against the Noticee in the SCN, her Reply dated July 22, 2016 and the material documents available on record. In the instant matter, the following issues arise for consideration and determination:-
- a. Whether the Noticee has failed to make disclosures under Regulation 13(1), 13(4A) read with 13(5) of SEBI (PIT) Regulations.
 - b. Whether the noticee failed to make disclosure under Regulation 29(1) read with 29(3) of SEBI (SAST) Regulations.
 - c. Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992 for the alleged violations by the noticee.
8. Before proceeding further, I would like to refer to the relevant provisions of the SEBI PIT Regulations, 1992 and SEBI SAST Regulations, 2011 :

SEBI (PROHIBITION OF INSIDER TRADING) 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.

13(4A) Any person who is a promoter or part of promoter group 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 from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-

regulation, and the change exceeds Rs.5 lakh in value or 25000 shares or 1% of total shareholding or voting rights, whichever is lower."

SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) 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(2)

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".

FINDINGS :

9. It is observed that the noticee held 2,52,562 shares constituting 4.26% of the total shareholding as on June 19, 2014. The date wise transaction of the noticee in the scrip of the DSSL is as follows:

Date of Transaction	No. of shares bought	Opening Holding		Closing Holding	
		No. of Shares	In %	No. of Shares	In %
20/06/2014	18000	252562	4.26	270562	4.57
23/06/2014	10420	270562	4.57	280982	4.74
25/06/2014	4920	280982	4.74	285902	4.83
27/06/2014	7600	285902	4.83	293502	4.96

02/07/2014	10000	293502	4.96	303502	5.12
10/07/2014	100	303502	5.12	303602	5.13
11/07/2014	4000	303602	5.13	307602	5.19
25/07/2014	2000	307602	5.19	309602	5.23
TOTAL	57040				

10. From the table above, it is observed that the noticee purchased 10000 shares of DSSL on July 02, 2014 and her individual shareholding increased from 4.96% to 5.12%. As, the shareholding of the noticee crossed the benchmark of 5%, she was required to make a disclosure under Regulation 13(1) of SEBI (PIT) Regulation to the DSSL within two working days of the said acquisition. The noticee has submitted a documentary proof which indicates that she had made the required disclosure under Regulation 13(1) of SEBI (PIT) Regulations to the DSSL on July 02, 2014 itself and DSSL has also disclosed the same to the Stock Exchange on July 2, 2014. In view of this, I am of the view that the charge that the noticee failed to make a required disclosure under Regulation 13(1) of SEBI (PIT) Regulations to the DSSL does not stand established.
11. There is no dispute that the noticee is the promoter of the DSSL. Even the noticee has admitted that she is the promoter of DSSL. As per Regulation 13(4A) of SEBI (PIT) Regulations, any person who is promoter or part of promoter group of a listed company is required to disclose to company (DSSL in present case) and stock exchanges (NSE and BSE in present case), the total shares or voting rights held and a change in shareholding or voting rights, if there has been change in such holding from the last disclosure made under the listing agreement or under sub-regulation (2A) or under this sub-regulation and the change exceeds Rs. 5 Lakhs in value or 25000 shares or 1% of total shareholding or voting rights, whichever is lower. According to the noticee, she was not required to make any disclosure under Regulation 13(4A) of SEBI (PIT) Regulations as at no stage her shareholding increased by more than limits prescribed under the said regulation.
12. The provision of Regulation 13(4A) of SEBI (PIT) Regulations has defined the “change” being excess of Rs. 5 lakhs in value or 25000 shares or 1% of the total shareholding or voting rights. Further, it is stated that any person who is promoter or part of promoter

group of a listed company is required to disclose to the company and to the stock exchanges the total shares or voting rights held and “a change” in shareholding or voting rights from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation. It is clear from the plain reading of the provision of the said regulation that if there is “a change” in shareholding of a person under the promoter group as defined i.e. being excess of Rs. 5 lakhs in value or 25000 shares or 1% of the total shareholding or voting rights, then only such person needs to make a disclosure. This interpretation is in sync with the objectives of SEBI (PIT) Regulations according to which all the material action (acquisition / disposal of shares in Target Company) by promoter group should be disclosed to the public through stock exchanges. The non-material event where acquisition of shares within the limits defining “a change” need not be disclosed as such acquisition/ disposal of shares in Target Company shall be disclosed under SEBI (SAST) Regulations when the change in promoter’s holding in the target company breach the creeping acquisition limits as prescribed under the said Regulations. From the above date wise transaction details of the noticee, I find that the noticee at no point of time in a single instance acquired shares that crossed the limits to cause “a change” under regulation 13(4A) of SEBI (PIT) Regulations i.e. her each transaction had not exceeded the 5 lakhs in value or 25000 shares or 1% of the total shareholding or voting rights. As such the charge against the noticee that she failed to make disclosure as required under Regulation 13(4A) read with 13(5) of SEBI (PIT) Regulations does not stand established.

13. In respect of the allegation of violation of Regulation 29(1) read with 29(3) of SEBI (SAST) Regulations is concerned, I find that the shareholding of the noticee along with Persons Acting in Concert (PAC) as on March 2014 was 30.09% of the share capital of the DSSL which was more than 5% as prescribed under Regulation 29(1) of the said Regulation. On July 02, 2014, the noticee purchased 10000 shares of DSSL whereby that her individual shareholding crossed 5% limit however, the aggregate shareholding of the noticee along with PAC was already in excess of 5% of the total shareholding of the target company and was disclosed by the DSSL at the time of notification of SEBI (SAST) Regulations, 2011. Therefore, no specific disclosure was required to be made by the noticee when her individual shareholding crossed 5% of the total shareholding of the target company. I am in consonance to the submission of the noticee that she was not

required to make disclosure under Regulation 29(1) read with 29(3) of SEBI (SAST) Regulations as the noticee along with PAC were already holding more than 5% of the shareholding of DSSL (target company) before the purchase of 10000 shares by the noticee on July 02, 2014. It is to be noted here that Regulation 2(q) defines PAC and it includes promoters and members of the promoter group. In view of this, I am of the view that the charge that the noticee failed to make a required disclosure under Regulation 29(1) read with 29(3) of SEBI (SAST) Regulations to the DSSL, BSE and NSE does not stand established.

ORDER

14. I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the said AO Rules, hereby, conclude that the Noticee viz. Mrs. Nilam S Anjaria has not violated Regulations 13(1), 13(4A) read with 13(5) of SEBI (PIT) Regulations and Regulations 29(1) read with 29(3) of SEBI (SAST) Regulations and the SCN is accordingly disposed of.
15. In terms of Rule 6 of the AO Rules, copies of this order are sent to the Noticee and also to The Securities and Exchange Board of India.

Date: October 20, 2016

Place: Mumbai

Nagendraa Parakh

Chief General Manager & Adjudicating Officer