

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: AO/SBM/EAD-3/ 70 /2017)

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:

**Victory Sales Pvt. Ltd.
Room no 44, 3rd Floor
Jariwala Building, Arthur Road
Tardeo
Mumbai 400 034
(PAN:AAACV7299K)**

**In the matter of
DJS Stock & Shares Limited**

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), while conducting an examination in the scrip of DJS Stock & Shares Limited. (hereinafter referred to as "**Company/DJS**") during the period March 31, 2014 to May 30, 2014 (hereinafter referred to as "**relevant period**"), observed that Victory Sales Private Limited (hereinafter referred to as "**Noticee**") had failed to make timely disclosures pertaining to its acquisition of shares of DJS during the relevant period. It was observed that the Noticee had allegedly failed to comply with the disclosure requirements specified under the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and also under the provisions

of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer, vide Order dated May 13, 2015 under Section 15-I(1) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Rule 3 of SEBI (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 violations of the provisions of Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) and 13(3) of the PIT Regulations, by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

3. Show Cause Notice reference no. A&E/EAD3/SBM/17875/2016 dated June 23, 2016 (hereinafter referred to as "**SCN**") was issued to the Noticee in terms of Rule 4 of the Adjudication Rules read with section 15 I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty be not imposed under the provisions of section 15A(b) of the SEBI Act 1992, for the aforesaid alleged contravention of the provisions of law by the Noticee. The SCN issued to the Noticee *inter alia* mentioned the following :
 - a) DJS is listed on the Bombay Stock Exchange (BSE) and the total paid up share capital of DJS as on March 31, 2014 and June 30, 2014 was Rs 754.56 lakh (represented by 7,54,56,000 equity shares of face value of Rs 1/- each).
 - b) It is observed that Noticee was holding 9,29,450 shares of DJS in its demat account as on April 18, 2014, which was 1.23 % of the total paid up capital of DJS. It is further observed that Noticee purchased 59,06,018 shares of DJS in the months of April and May 2014, by way of off-market transactions. These shares were credited to the demat account of the

Noticee (BOID 1206690000004551) on various dates between April 19, 2014 to May 23, 2014. It was alleged that due to the aforementioned purchase of shares by the Noticee, the shareholding of the Noticee in DJS increased from 1.23% (as on April 18, 2014) to 6.19.% (as on April 19, 2014) and further increased to 9.06% (as on May 23, 2014).

- c) It is alleged that on April 19, 2014, when the Noticee purchased 37,39,965 shares of DJS, the shareholding of the Noticee in DJS increased from 1.23% to 6.19%, thereby crossing the threshold limit of 5%, which required disclosures to be made by the Noticee to DJS in the prescribed reporting format (Form A), within 2 working days of the acquisition of these shares, as prescribed under Regulation 13(1) of the PIT Regulations. Similarly, in terms of the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations, Noticee was required to disclose its aggregate shareholding and voting rights to the Company and to BSE within two working days of its acquisition of the shares in the prescribed format. However, it is alleged that the Noticee failed to make these disclosures to DJS and BSE upon crossing the threshold limit of 5% of shareholding in the Company, within two working days of its acquisition of the shares i.e. disclosures were required to be made by the Noticee in the prescribed format within two working days from April 19, 2014, as was required under the aforementioned provisions of the PIT Regulations and SAST Regulations.
- d) Further, it is observed that Noticee's shareholding in DJS had crossed the threshold limit of 5% as on April 19, 2014. It is alleged that Noticee had subsequently purchased 17,55,303 shares of DJS during the period between April 25, 2014 to May 16, 2014. Therefore, as on May 16, 2014, the total number of shares of DJS held by the Noticee was 64,24,718 shares, which constituted 8.51% of the total paid up capital of DJS. It is therefore alleged that as on May 16, 2014, the shareholding of the Noticee in DJS had increased by more than 2 % from its shareholding position as on April 19, 2014, which required the Noticee to make necessary

disclosures to DJS in the prescribed format (Form C), under the provisions of Regulation 13 (3) of the PIT Regulations. Similarly, Noticee was also required to make necessary disclosures under the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, as the shareholding of the Noticee in DJS had changed by more than 2% after crossing the threshold limit of 5%.

- e) It is alleged in the SCN that the Noticee had failed to make these disclosures that were required to be made under the aforementioned provisions of PIT Regulations and SAST Regulations. Therefore, adjudication proceedings were initiated against the Noticee in terms of the provisions of section 15 A(b) of the SEBI Act for the alleged violation of the provisions of law.
4. The SCN dated June 23, 2016 was served on the Noticee on June 27, 2016 and the proof of service is available on record. Since the Noticee failed to respond to the SCN, a reminder was sent to the Noticee vide letter dated May 26, 2017. The said letter was also served on the Noticee as per the postal confirmation available on record. In the interest of natural justice and in view of the fact that Noticee failed to submit its reply to the SCN, the Noticee was granted an opportunity of hearing on August 16, 2017 vide letter dated July 26, 2017. The said letter was served on the Noticee and the postal confirmation is available on record. However, Noticee not only failed to appear for the hearing fixed on the stipulated date but also failed to submit its reply to the SCN. Thereafter, another opportunity of hearing was granted to the Noticee on September 08, 2017 vide letter dated August 21, 2017. The said letter dated August 21, 2017 was also served on the Noticee as per the postal confirmation on record. However, Noticee not only failed to appear for the hearing on the stipulated date but also failed to submit its reply/response to the SCN.
5. I observe that the Noticee was provided with ample opportunity to present its case and make the submissions in the present matter. However, the Noticee has failed to respond to the same. In this context, I would like to place reliance

on the Order dated February 11, 2014 passed by the Hon'ble SAT in the matter of Sanjay Kumar Tayal and Ors vs SEBI (Appeal No 68 of 2013), where 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 with the matter ex-parte on the basis of facts/material on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS:

6. I have carefully perused the material on record and the facts and circumstances of the case. The allegation against the Noticee is that it had failed to make the necessary disclosures in respect of its purchase of shares of DJS, during the relevant period, under the provisions of SAST Regulations and PIT Regulations, as applicable.
7. Before moving forward, the relevant extracts of the provisions of the SAST Regulations and PIT Regulations allegedly violated by the Noticee are mentioned below

SAST Regulations, 2011

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) *Any person, 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 the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of*

total shareholding or voting rights in the target company, in such form as may be specified.

(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

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.*

(3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company [in Form C] 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.*

8. From the material/data available on record, I find that the following Table mentions the details of the transactions undertaken by the Noticee during the relevant period-

Date	No. of Shares of DJS acquired by the Noticee	Shares acquired as percentage of the total share capital of DJS	Total no. of shares of DJS held by the Noticee	Total shareholding(in % terms) of the Noticee in DJS
31-Mar-14	0	0	9,29,450	1.23%
19-Apr-14	15,58,230	2.07%	24,87,680	3.30%
19-Apr-14	21,81,735	2.89%	46,69,415	6.19%
25-Apr-14	8,50,998	1.13%	55,20,413	7.32%
5-May-14	73,350	0.09%	55,93,763	7.41%
6-May-14	50,000	0.07%	56,43,763	7.48%
8-May-14	3,67,025	0.49%	60,10,788	7.97%
16-May-14	4,13,930	0.54%	64,24,718	8.51%
23-May-14	15,000	0.02%	64,39,718	8.53%

Date	No. of Shares of DJS acquired by the Noticee	Shares acquired as percentage of the total share capital of DJS	Total no. of shares of DJS held by the Noticee	Total shareholding(in % terms) of the Noticee in DJS
23-May-14	2,49,603	0.34%	66,89,321	8.87%
23-May-14	1,46,147	0.19%	68,35,468	9.06%
Total	59,06,018	7.83%		

9. I find 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 and also from the data mentioned in the above Table that the Noticee was holding less than 5% shares of DJS as on April 18, 2014 (i.e. Noticee was holding 9,29,450 shares representing 1.23% of the total share capital of the Company). I find that the Noticee had purchased 37,39,965 shares of the Company on April 19, 2014, through off-market transactions. These transactions of the Noticee resulted in the increase in its shareholding in the Company from 1.23% to 6.19% as on April 19, 2014. The above transactions of the Noticee also resulted in its shareholding in DJS crossing the threshold limit of 5% (of the total share capital of the company) as on April 19, 2014. Therefore, Noticee was required to make the disclosures to the Company and to BSE in the prescribed format within two working days of its acquisition of shares in terms of Regulation 29(1) read with Regulation 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.
10. I find from the material made available that the Noticee had failed to make the necessary disclosures u/r 29 (1) r/w regulation 29(3) of the SAST Regulations and also under Regulation 13 (1) of the PIT Regulations. Therefore, I hold that Noticee has violated the provisions of Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations and also Regulation 13 (1) of the PIT Regulations.

11. Further, from the above Table, I find that the Noticee (who was already holding more than 5% shares in DJS as on April 19, 2014) purchased 17,55,303 shares of DJS during the period April 25, 2014 to May 16, 2014, by way of off-market transactions. These transactions of the Noticee resulted in change in its shareholding or voting rights and the change in the shareholding of the Noticee exceeding 2% of the total shareholding or voting rights in the company. Thus, as on May 16, 2014, the total number of shares of DJS held by the Noticee was 64,24,718 shares, which constituted 8.51% of the total paid up capital of DJS i.e there was a change in the shareholding of the Noticee which exceeded 2% of the total share capital of DJS. I observe from the material made available that Noticee has failed to make the necessary disclosures to the Company and to BSE under the provisions of Regulation 29(2) r/w Regulation 29 (3) of the SAST Regulations and also failed to make the disclosure to the Company under the provisions of Regulation 13 (3) of the PIT Regulations. Therefore, I hold that Noticee has violated the provisions of Regulation 29(2) r/w Regulation 29 (3) of the SAST Regulations and also violated the provisions of Regulation 13 (3) of the PIT Regulations.
12. From the BSE website, I find that no disclosures were observed to have been made by the Noticee during the relevant period under the provisions of SAST Regulations and PIT Regulations. I observe that BSE in its communication dated July 23, 2014 has categorically confirmed that it had not received any disclosures from the Noticee under the provisions of SAST Regulations and PIT Regulations. An email dated July 11, 2014 was sent to the Company by SEBI seeking confirmation from the company about the disclosures made by the Noticee. However, the Company has not responded to the same till date.
13. In this context, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure 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.”

14. In view of the above, I hold that the Noticee has failed to make the disclosure required under Regulation 29(1) and Regulation 29(2) read with Regulation 29(3) of the SAST Regulations and also under Regulation 13(1) and Regulation 13(3) of the PIT Regulations. Therefore, I am convinced that the Noticee has violated the provisions of the aforementioned Regulations.

15. 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.

16. 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.

17. 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.
18. I am of the view that the details of the shareholding of the persons acquiring substantial stake and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant case, the Noticee initially having acquired more than 5% stake in the Company and subsequently, acquiring more than 2% of the shares of the Company, the timely disclosures of the same by the Noticee under the relevant provisions of SAST Regulations and PIT Regulations, were of significant importance from the point of view of the investors. 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.
19. In this context, I would like to quote the relevant extracts from the Order of the Hon'ble Securities Appellate Tribunal (SAT) in its judgment on 4.9.2013 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 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"* In light of the above observations of Hon'ble SAT, I am of

the view that the violation of the provisions of Regulation 13(1) of the PIT Regulations, 1992 and Regulation 29(1) of the SAST Regulations, 2011 committed by the Noticee are not substantially different. Therefore, these violations committed by the Noticee can be considered as a single violation for the purpose of imposition of penalty on the Noticee, as violation of the first regulation would automatically trigger the violation of the second regulation

ORDER

20. Having considered all the facts and circumstances of the case, the material available on record and also the factors mentioned in the preceding paragraphs, 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 a penalty of Rs 4,00,000/- (Rupees Four lakh only) on the Noticee viz. Victory Sales Pvt. Ltd. (PAN: AAACV7299K) under the provisions of Section 15A(b) of the SEBI Act, 1992 for its failure to make the necessary disclosures under the provisions of Regulation 29(1) and Regulation 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulation 13(1) and 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12 (1) and 12(2)(a) of SEBI (Prohibition of Insider trading) Regulations, 2015. I am of the view that the said penalty is commensurate with the default committed by the Noticee.
21. 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 the 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

22. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief of Enforcement Department (EFD) of SEBI. The format for forwarding details / confirmation of the e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is mentioned as under:

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)	

23. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Victory Sales Pvt. Ltd. and also to Securities and Exchange Board of India.

Place: Mumbai
Date: September 26, 2017

SURESH B MENON
ADJUDICATING OFFICER