

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD/BJD/BKM/94-98/2017-18**

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:

- 1. Ram Narayan Agarwal (Since Deceased)**
- 2. Ashok Kumar Agarwal (PAN: ABBPA9215H)**
- 3. Gulab Chand Agarwal (PAN: ABBPA9209K)**
- 4. Satish Kumar Agarwal (PAN: ABBPA9216E) and**
- 5. Anil Kumar Agarwal (PAN: ABBPA9214G)**

In the matter of Sanwaria Agro Oils Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to the alerts from Data Warehousing and Business Intelligence System (DWBIS), examined into the alleged irregularity in the trading in the shares of Sanwaria Agro Oils Limited. (hereinafter referred to as SAL) and into the possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act') and various Rules and Regulations made there under for the period from April 01, 2014 to September 01, 2014 by Ram Narayan Agarwal (Noticee 1), Ashok Kumar Agarwal, Gulab Chand Agarwal, Satish Kumar Agarwal and Anil Kumar Agarwal (Noticee 2-5), promoters and promoter group of SAL.
2. It was revealed that the shareholding of Noticee 2 increased from 4.61% to 6.72% due to transfer from another promoter i.e. Noticee 1 on August 19, 2014. However, they failed to make disclosure under Regulation 13(1) read with 13(4A) SEBI

(Prohibition if Insider Trading) Regulations 1992 (hereinafter referred to as PIT Regulations 1992).

3. It was further revealed that Ram Narayan Agarwal had transferred 7331150 shares each (in total 29324600 shares) to other four promoters on August 19, 2014. However, Ashok Kumar Agarwal, Gulab Chand Agarwal, Satish Kumar Agarwal and Anil Kumar Agarwal have not make disclosures in terms of Regulation 13(1), 13(3) and Regulation 13(4A) of PIT Regulation 1992.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI has, therefore, initiated adjudication proceedings and I have been appointed as Adjudicating Officer vide Order dated May 22, 2017 under Section 19 of the SEBI Act, 1992 read with Section 15-I (1) of SEBI Act 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “Adjudication Rules 1995”) to inquire and adjudge under Section 15 A(b) of the SEBI Act, for the alleged violations committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A common Show Cause Notice (hereinafter referred to as “SCN”) bearing ref. no. EAD/BJD/BKM/21965/1-5 dated September 12, 2017 was issued to the Noticees under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15 A(b) of the SEBI Act for the violations alleged to have been committed by the Noticees. SAL vide its letter dated September 27, 2017 informed that Noticee Ram Narayan Agarwal is no more and also submitted the death certificate in support of the submission. Ashok Kumar Agarwal, Gulab

Chand Agarwal, Satish Kumar Agarwal and Anil Kumar Agarwal vide their similar letters all dated September 27, 2017 filed the replies to the SCN.

6. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, vide notices dated December 06, 2017 Noticees were granted an opportunity of personal hearing on December 20, 2017. Hearing Notices were delivered to the Noticees on December 11, 2017. Based on the request received from the Noticees, the hearing was reschedule to December 27, 2017
7. During the hearing held on December 27, 2017, the Authorized Representative (AR) representing on behalf of Noticee 2-5 reiterated the submissions made by them vide letters submitted earlier in reply to the SCN.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges levelled against the Noticees in the SCN, written submissions made and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:
 - a. *Whether the Noticees Ram Narayan Agarwal and Ashok Kumar Agarwal have violated Regulation 13(1) read with 13(4A) PIT Regulation 1992*
 - b. *Whether the Noticees Gulab Chand Agarwal, Satish Kumar Agarwal and Anil Kumar Agarwal have violated Regulation 13(1), 13(3) and Regulation 13(4A) of PIT Regulation 1992?*
 - c. *Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15 A(b) of the Act?*

d. If so, what would be the quantum of monetary penalty that can be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the Act?

9. Before proceeding further, I would like to refer to the relevant provisions of the PIT Regulations, 1992 which read as under:

Disclosure of interest or holding in listed companies by certain persons -under PIT Regulations 1992

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.*

Continual disclosure

(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.*

(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 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

SUBMISSIONS MADE BY NOTICEES:

10. Vide identical letters dated September 27, 2017 the Noticees submitted as under:

- (i) That Ashok Kumar Agarwal, Gulab Chand Agarwal, Satish Kumar Agarwal and Anil Kumar Agarwal were the shareholder of 16058200 (4.61%), 29296496 (8.42%), 20383000 (5.86%) and 18077312 (5.19%) equity shares of SAL respectively as on August 18, 2014 and of 23389350 (6.72%), 36627646 (10.52%), 27714150 (7.96%) and 25408462 (7.30%) equity shares of SAL respectively as on August 19, 2014
- (ii) Subsequent to inter-se transfer/transmitted (promoter to promoter) shares of their father, Ram Narayan Agarwal (since deceased) which were transferred/transmitted in accordance with his will after his demise. However, there was no change in the total promoter shareholding.
- (iii) Thereafter the required intimation of change in shareholding, was disclosed under Regulation 29(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations 2011(hereinafter referred to as SAST 2011) to company and thereafter company disseminated the information to public via intimating BSE Limited and National Stock Exchange of India Limited. The copy of the same has been submitted as enclosure with the letter dated September 27, 2017.
- (iv) Further the continual disclosures of shareholding in the company under regulation 30(1) and 30(2) of SAST 2011 are given regularly on yearly basis at the end of every financial year. The copy of the same has been submitted as enclosure with the letter dated September 27, 2017. The copy of the annual report and annual returns are filed by the company on yearly basis which contains the information of promoter holding.

- (v) All the above documents are in public domain and can be viewed by anyone who wish to; which clearly exhibits that they had no malafide intention of not giving the same disclosures under PIT Regulations 1992 and if they had any, then the same wouldn't have been disclosed under SAST 2011 which were disseminated on exchange to bring to the knowledge of the public at large.
- (vi) Moreover these shares till date even have not been used in trading and were simply inter-se transferred/transmitted (promoter to promoter) and no profit was made out of such transaction. Even there was no price fluctuation during that period which clearly wipes out any intention of insider trading or manipulating with shares price.
- (vii) In addition; all the above facts have already been brought before SEBI in their replies dated June 28, 2016 consequent to SEBI letter No. EFD/DRA-I/JS/ASG/EDCDI/OW/15154/2016 dated May 26, 2016.
- (viii) We would like to reiterate that the shares were transmitted to the noticees on account of the death of their father Mr Ram Narayan Agarwal. The shares were transmitted on August 19, 2014 and the noticees filed necessary disclosures to the stock exchange under Regulation 29(1)/29(2) of the SAST Regulations. Further the change in the shareholding is also reflected in the shareholding pattern filed with the stock exchanges for quarter ending September 2014.

11. Regulation 13(1) of PIT Regulations, 1992 mandates any person who holds more than 5% shares or voting rights in any listed company to disclose to the company, the total number of shares held by the person. The said change is to be disclosed to the company within 2 working days from the date of acquisition or receipt of intimation of allotment of shares. Further, Regulation 13(3) of PIT Regulations, 1992 that once a person 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. Further Regulation 13(4A) specifically mandates the promoters of the listed company to disclose to the company and the stock exchanges where the shares of the company are listed, if there has been a change in such holdings of such person from the last disclosure and the change exceeds Rs 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

12. I find from the SCN that the shares of SAL are listed on Bombay Stock Exchange Ltd. (BSE) and National Stock Exchange (NSE). Ram Narayan Agarwal (since deceased) and his sons viz. Ashok Kumar Agarwal, Gulab Chand Agarwal, Satish Chandra Agarwal and Anil Chand Agarwal were the promoters of SAL.

13. From the shareholding pattern for June 2014 and September 2014, I note following changes in the holdings of the promoters of SAL :

Name	Opening Holding	Closing Holding
Ram Narayan Agarwal	29324600(8.43%)	Nil
Ashok Kumar Agarwal	16058200(4.61%)	23389350(6.72%)
Gulab Chand Agarwal	29296496(8.42%)	36627646(10.52%)
Satish Kumar Agarwal	20383000(5.86%)	27714150(7.96%)
Anil Kumar Agarwal	18077312(5.19%)	25408462(7.30%)

14. It is noted that the holding of Ashok Kumar Agarwal increased from 4.61% to 6.72% due to transfer from another promoter Ram Narayan Agarwal. However, he failed to make disclosure to the company and the exchanges under PIT Regulations 1992.

15. It was further noted that Ram Narayan Agarwal had transferred 7331150 shares each (in total 2,93,24,600 shares) to other four promoters on August 19, 2014. However, Ashok Kumar Agarwal, Gulab Chand Agarwal, Satish Kumar Agarwal and Anil Kumar Agarwal have not make disclosures in terms of Regulation 13(1), 13(3) and Regulation 13(4A) of PIT Regulation 1992.
16. I note that BSE vide email dated October 20, 2014 has confirmed that it had not received any disclosure from the Noticees.
17. Upon the said change in the holdings, the Noticees were required to make the necessary disclosures to the company and the stock exchange as prescribed under the PIT Regulations 1992 and SAST Regulations 2011. However, it was alleged in the SCN that the Noticees did not make the said disclosures under PIT Regulations 1992.
18. Noticees in reply to SCN, Vide letter dated September 27, 2017, submitted that Shri Ram Narayan Agarwal had expired on April 10, 2013 and enclosed a certified copy of the 'Certificate of Death' as issued by the Municipal Corporation of Greater Mumbai. They also submitted that consequent to death of Shri Ram Naryan Agarwal, 73,31,150 shares each (in total 2,93,24,600 shares) were transferred to other promoters i.e. Ashok Kumar Agarwal, Gulab Chand Agarwal, Satish Kumar Agarwal and Anil Kumar Agarwal on August 19, 2014. Thereafter, the shareholding of Noticee 2-5 have increased to 2,33,89,350 (6.72%), 3,66,27,646 (10.52%), 2,77,14,150 (7.96%) and 2,54,08,462 (7.30%) equity shares of SAL respectively.
19. From the foregoing facts, I find that the Noticee 2-5 are admittedly the promoters of SAL and I note that Ashok Kumar Agarwal, Gulab Chand Agarwal, Satish Kumar Agarwal and Anil Kumar Agarwal vide their letters dated September 27, 2017 have submitted that they made the disclosures under Regulation 29(2) of the SAST Regulations 2011. They submitted that all the documents are in public domain and

can be viewed by anyone who wish to, which clearly exhibits that they had no malafide intention of not giving the same disclosures under PIT Regulations 1992 and if they had any, then the same wouldn't have been disclosed under SAST 2011 which were disseminated on exchange to bring to the knowledge of the public at large. For the purpose of verifying the authenticity of the compliance of the provisions of SAST Regulations 2011 by the Noticees, BSE's website has been checked. The website indicates that Ashok Kumar Agarwal had made the disclosures under Regulation 29(1) of SAST Regulations 2011, Gulab Chand Agarwal, Satish Kumar Agarwal and Anil Kumar Agarwal made disclosures under Regulation 29(2) of SAST Regulations 2011 on November 05, 2014. However, the disclosure under SAST Regulations 2011 has also been done belatedly with a delay of more than a month.

20. I note from the facts on record that Noticee 2-5 received shares in their demat accounts, through transmission of shares, consequent to death of their father, Ram Narayan Agarwal (since deceased) in accordance with the will of Noticee 1 after his demise. I am of the view that prompt disclosures under SAST and PIT Regulations will enable investors and general public to track the shareholding of substantial shareholders or promoters, and take informed decision regarding their investment decisions. Therefore, any delayed disclosure or non-disclosure by those who have been mandated by regulations to make disclosure, would materially affect the interest of investors, particularly in cases where there are changes in promoters of the company.

21. I note from records that Promoter shareholding did not undergo any changes as per shareholding pattern for June 2014 and September 2014. However, there were inter-se transfer of shares from Noticee 1 to Noticee 2 to 5, consequent to death of Noticee 1. Further, I also note that the shares were credited into the demat account of Noticee 2 to 5 on August 19, 2014 through operation of law i.e. transmission.

22. Noticee 2-5 in their submission referred to Adjudicating Order in the matter of Rajoo Engineers Ltd, wherein it was stated that change in shareholding is reflected and available in public domain and transmission not being voluntary and is by operation of law, Noticees need not make disclosure under PIT Regulations 1992. I do not concur that no disclosures are required to be made under PIT regulations 1992 for shares acquired through transmission. The objectives of disclosure of shareholding pattern of company and disclosures to be made by mandated entities are different. I note from the plain reading of Regulations 13(1) of PIT Regulations 1992 that it pertains to initial disclosure of interest by directors and officers and substantial shareholders in the listed companies upon becoming a shareholder and Regulations 13(3) of PIT Regulations 1992 provides for continuous disclosures. The said Regulations contemplates initial / continuous disclosure by such entities who hold more than 5% shares or voting rights. Therefore, initial / continuous disclosure is applicable to all shareholders holding more than 5% of shares or voting rights of company.
23. I note from the submission of Noticee 2-5 that they had received shares from their late father by operation of law. I, however, find that there is no exemption available under the PIT Regulations 1992 and Takeover Regulations 2011 from making the relevant disclosures under the applicable provisions of the said Regulations. Noticee 2-5, I find have admitted to have contravened the applicable SEBI Regulations unintentionally. Thus, by not making the requisite disclosures, Noticee 2-5 failed to comply the relevant provisions of PIT Regulations 1992.
24. However, I am of the view that mode of acquisition of shares would also decide the materiality of information from investors point of view. In note from Form A of Regulation 13(1) and From C of Regulation 13(3) of PIT Regulations that under the column mode of acquisition there is mention of only market purchase / public / rights / preferential offer and not transmission. I am of the view that PIT Regulations 1992 assign greater materiality to acquisition made through voluntary acts of acquisition

rather than acquisition through operation of law. In the instant case, I note that Noticee 2 to 5 have acquired shares through transmission i.e. operation of law and not through acquisition through market or off market transactions or other mode of acquisitions which would then be considered as the voluntary act of Noticees. I am of the view that non-disclosure by Noticee 2 to 5 under PIT Regulations 1992 may not have material impact to investors and therefore I am inclined to take lenient view in the matter and conclude that transmission of shares, sans any voluntary act on the part of the promoter, is not a fit case for imposition of monetary penalty.

25. The Noticee 2-5 have cited the copy of the order passed by Hon'ble SAT in Mrs. Devyani Chandrakant Doshi Vs SEBI dated May 8, 2014 wherein the Hon'ble Tribunal had concurred the view of the Adjudicating Officer that "*....while transfer of shares relates to a voluntary act on the part of the shareholder, transmission is brought about by the operation of law.*"

26. In addition to the above, upon perusal of the documents available on record, I find that the disclosure with respect to the holding of securities (including shares, warrants, convertible securities) of persons belonging to the category of "Promoter and Promoter Group" including that of the Noticee 2-5 was made by SAL to the BSE as required under SAST Regulations 2011 within two months of the date of acquisition of shares by the Noticee 2-5 i.e. on November 05, 2014 (acquisition date being August 19, 2014). Therefore, I note that the said information was already in the public domain. I also note from that Noticee 2 to 5 are part of promoter group and over all shareholding of promoters as per the shareholding pattern for June 2014 to September 2014 did not undergo any change. Further, I also note from the shareholding pattern for September 2014, available in public domain, that shareholding of Noticee 2-5 reflects shareholding after transmission of shares.

27. Considering that disclosures made by Noticee 2-5 under SAST Regulations 2011 and shareholding pattern for September 2014 reflecting post transmitted shareholding are in public domain and further transfer of shares are inter se pursuant to the operation of law, I am inclined to take lenient view as there is no material impact of such non-disclosures made by Noticee 2-5 under PIT regulations 1992 on the investors, I consider it not a fit case for imposition of monetary penalty under Section 15A(b) of the SEBI Act and therefore, the Noticees 2 to 5 viz. Ashok Kumar Agarwal, Gulab Chand Agarwal, Satish Kumar Agarwal and Anil Kumar Agarwal are exonerated from the charges leveled in the SCN.

ORDER

28. 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, I hereby conclude that the charges leveled against the Noticees viz. Ashok Kumar Agarwal, Gulab Chand Agarwal, Satish Kumar Agarwal and Anil Kumar Agarwal are disposed of without imposition of any penalty. Further, I have taken on record the submission that one of the Noticees i.e. Ram Narayan Agarwal (Noticee 1) expired on April 10, 2013. Therefore, Adjudication proceedings against Shri Ram Narayan Agarwal stand abated.

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

Date: December 28, 2017

Place: Mumbai

B J DILIP

ADJUDICATING OFFICER