

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD-2/DSR/RG/891/2017]

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:

Bayswater Enterprise Private Limited (PAN: AAACW5773B)

In the matter of

TRANSCHEM LIMITED

1. Securities and Exchange Board of India (hereinafter referred to as the 'SEBI') had examined the trading in the scrip of Transchem Limited (hereinafter referred to as the Company / TL) 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, 1992') and various Rules and Regulations made there under during the period from January 01, 2014 to December 31, 2014.
2. During the period of examination, it was observed that the shareholding of Bayswater Enterprise Private Limited (hereinafter referred to as the 'Noticee') in the company had increased from 4.64% to 5.17% in July 2014. The Noticee had purchased 25,000 shares till the end of July 2014 through one of its broker viz. Apaar Finance & Investments Limited (hereinafter referred to as Apaar) and sold 5,020 shares till the end of July 2014 through another broker viz. Modex International Securities Limited.
3. It was further observed that at the end of the month of July 2014, Apaar had transferred a total of 69,990 shares of TL to the Noticee. The said shares were transferred in two tranches i.e. 47,991 shares were transferred on July 09, 2014 and 21,999 shares were transferred on July 31, 2014. After the settlement of the sale transactions, it was observed that the Noticee held 64,970 shares in its account which led to the increase in its shareholding to 5.17% of the share capital

of TL which required it to make the necessary disclosures under Regulation 29(1) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the 'SAST Regulations') and Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations'). However, it was observed that the Noticee had failed to make the said disclosures.

4. SEBI, therefore, initiated adjudication proceedings against the Noticee for the alleged violation of the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations by the Noticee in the matter of TL.

Appointment of Adjudicating Officer

5. I have been appointed as the Adjudicating Officer, vide order dated October 23, 2017, under Section 15-I of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the alleged violation of the abovementioned provisions of law by the Noticee.

Show Cause Notice, Reply and Personal Hearing

6. Accordingly, a show cause notice bearing no. EAD-2/DSR/RG/27690/1/2017 dated November 09, 2017 (hereinafter referred to as the 'SCN') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring it to show cause as to why an inquiry should not be held against it for the alleged violation of provisions of law. The said SCN was duly delivered to the Noticee and the proof thereof is available on record. However, it is noted that no reply was submitted by the Noticee in the matter.
7. Therefore, in the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the Adjudication Rules, vide hearing notice dated November 28, 2017, an opportunity of personal hearing was granted to the Noticee on December 15, 2017 in the matter. The said hearing notice was duly delivered and the proof thereof is available on record. However, the Noticee did not avail of the said opportunity of personal hearing on the scheduled date.

8. I find that as the Noticee has not submitted any reply to the SCN and has also not availed the opportunity of personal hearing granted, it is presumed that the Noticee has admitted the violation of the said provision of law. I find that it is a settled principle of law that if the charges are not disputed by the Noticee, then, it is presumed that the same are admitted by the Noticee. Here, I note that ***the Hon'ble Securities Appellate Tribunal (SAT) in Appeal No. 68 of 2003 in the matter of Classic Credit Ltd. Vs. SEBI (decided on December 08, 2006)***, *inter alia*, held that –“*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*”.

Consideration of Issues, Evidence and Findings

9. I have carefully perused the charges levelled against the Noticee as per the SCN and the material as available on record. The issues that arise for consideration in the present case are:

(a) Whether 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?

(b) Do the violations, if any, on the part of the Noticee attract any penalty under Section 15A (b) of the SEBI Act, 1992?

(c) If yes, what should be the quantum of penalty?

10. Before proceeding further, it will be appropriate to refer to the relevant provisions of law which read as under:

Relevant provisions of PIT Regulations:

Disclosure of interest or holding in listed companies by certain persons -

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.

Relevant provisions of the SAST Regulations:

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(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of 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 address.

11. I find from the SCN that TL was incorporated as a private limited company on November 18, 1976 and converted into a public limited company on April 13, 1992. The Company is promoted by Chemitex Corporation in association with Rajen Desai, who is the chairman of the company. During the period of examination, it was observed that the shareholding of the Noticee in the company had increased from 4.64% to 5.17% in July 2014. The Noticee had purchased 25,000 shares till the end of July 2014 through one of its broker viz. Apaar and sold 5,020 shares till the end of July 2014 through another broker viz. Modex International Securities Limited. The details of the purchases and sale of shares of TL by the Noticee are as under:

Purchases by the Noticee in January 2014 – July 2014 period-

Date	Brk ID	Brk PAN	Brk Name	Client PAN	Gr Buy Vol	Gr Sell Vol
25/06/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
26/06/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
27/06/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
01/07/2017	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
02/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
03/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0

04/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
07/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
08/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
09/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
10/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
11/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
14/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
15/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
16/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
17/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
18/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
21/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
22/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
23/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
24/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
25/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
28/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
30/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
31/07/2014	154	AAACA0487G	APAAR FINANCE & INVESTMENT Ltd.	AAACW5773B	1000	0
TOTAL					25000	

Sale of shares by the Noticee in January 2014 – July 2014 period-

Date	Brk ID	Brk PAN	Brk Name	Client PAN	Gr Buy Vol	Gr Sell Vol
07/07/2014	3106	AAACM2105K	MODEX INTERNATIONAL SECURITIES LTD	AAACW5773B	0	4,070
08/07/2014	3106	AAACM2105K	MODEX INTERNATIONAL SECURITIES LTD	AAACW5773B	0	950
TOTAL						5,020

12. I further find from the SCN that at the end of the month of July 2014, Apaar had transferred a total of 69,990 shares of TL to the Noticee. The said shares were

transferred in two tranches i.e. 47,991 shares were transferred on July 09, 2014 and 21,999 shares were transferred on July 31, 2014. After the settlement of the sale transactions, it was observed that the Noticee held 64,970 shares in its account which led to an increase in its shareholding to 5.17% of the share capital of TL.

- 13.** It was observed that the broker viz. Apaar had transferred 44,990 shares in excess to the purchase transactions done by the Noticee. The transaction statement of the Noticee as on July 2014 is as under:

Date	Client Name	BO ID	Cpty Clnt Name	Cpty BO ID	Txn Type	Dr Cr Indc	Bkng Qty
07/07/2014	BAYSWATER ENTERPRISE PRIVATE LIMITED	12042900 00073771	MODEX INTERNATIONAL SECURITIES LTD	11000010 00015381	On Mkt	D	4,070
09/07/2014	BAYSWATER ENTERPRISE PRIVATE LIMITED	12042900 00073771	MODEX INTERNATIONAL SECURITIES LTD	11000010 00015381	On Mkt	D	950
09/07/2014	BAYSWATER ENTERPRISE PRIVATE LIMITED	12042900 00073771	APAAR FINACE AND INVESTMENT LTD	IN300118 10096642	INTERD EPOSIT ORY	C	47,991
10/07/2014	BAYSWATER ENTERPRISE PRIVATE LIMITED	12042900 00073771	BAYSWATER ENTERPRISE PRIVATE LIMITED	12020600 00863227	OFF MKT	C	47,991
31/07/2014	BAYSWATER ENTERPRISE PRIVATE LIMITED	12042900 00073771	APAAR FINACE AND INVESTMENT LTD	IN300118 10096642	INTERD EPOSIT ORY	C	21,999
Total holding at the end of July 2014							64,970

- 14.** On further examination, it was observed that the Broker viz. Apaar had transferred the shares purchased by another client i.e. Edulakanti Sumangoud (47,991 shares) to the Noticee. Upon enquiring about the said transaction, Apaar had submitted that upon receipt of a request letter from Edulakanti Sumangoud, instructing transfer of shares to the Noticee (in demat account no. – 1202060000863227) on July 08, 2014, the Broker had transferred the said shares in the account of the Noticee. As the Noticee had received 47,991 shares in excess to its purchase of 25,000 shares of TL in the month of July, 2014, it was observed that the

shareholding of the Noticee had increased to 5.17% which required it to make the necessary disclosures under Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations. However, it was alleged in the SCN that the Noticee had failed to make the said disclosures.

15. I find from the foregoing that the shareholding of the Noticee in the scrip of TL had indeed increased from 4.64% to 5.17% in July 2014 which did require it to make the necessary disclosures under the relevant provisions of law. As the said disclosures were not made by the Noticee, I am inclined to conclude that the Noticee, by failing to make the said disclosures, had violated the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations warranting imposition of monetary penalty as prescribed under Section 15A(b) of the SEBI Act, 1992 (as existed during the relevant period) 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 thereunder,--*

(b)*to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor 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 ***Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. Vs. SEBI***—the Hon'ble SAT has 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.”* Further, in the matter of ***Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010)***, the Hon'ble SAT had observed *“Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow.”*

17. At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of ***SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)***, wherein, the Hon'ble Court, inter alia, held: *“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation*

and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.”

- 18.** 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.*

- 19.** At this juncture, I would like to quote the ***Order dated September 04, 2013 passed by the Hon'ble SAT in the matter of Vitro Commodities Private Limited Vs. SEBI*** wherein the 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 "*

- 20.** In the 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 and Regulation 29(1) of the SAST Regulations committed by the Noticee are not

substantially different. Therefore, these violations can be considered as a single violation for the purpose of imposition of penalty on the Noticee in the matter.

21. I observe that, from the material available on record, it is not possible to ascertain any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default. I note that the default of the Noticee is 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.

ORDER

22. 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 a monetary penalty of ₹ 2,00,000/- (Rupees Two Lakh Only) under Section 15A(b) of the SEBI Act, 1992 on Bayswater Enterprise Private Limited. In my view, the aforesaid penalty is commensurate with the default committed by the Noticee.
23. The amount of penalty shall be paid either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. 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 "The Division Chief (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 payments is made :	

7.	Payment is made for: (like penalties/ disgorgement / recovery/ settlement amount and legal charges along with order details)	
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24. In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: December 18, 2017
Place: Mumbai

D.SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER