Q. I am a shareholder in xyz company with my total share capital being 7%. I sold a part of my share percent which reduced my holding by 3%. Will I be required to disclose about the same to under Form C to the company since my total shareholding has fallen below 5%?

**Your Answer:**

A. PIT Regulations: 13(3) 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.

**Model Version1 Answer:**

12. I also note that the disclosure requirements under Regulation 13(3) of the PIT Regulations are triggered when there is a change in the shareholding of an entity, who is holding more than 5% shares of a company, and the change resulting in the entity’s shareholding crossing the threshold limit of 2% of the total share capital of the company, irrespective of whether the change in shareholding has occoured as a result of fresh purchase of shares by the entity and or due to the sale of shares by the entity. Upon change in the shareholding of an entity and the change crossing the threshold limit of 2% of the total share capital of the company, in terms of Regulation 13(3) r w Regulation 13(5) of the PIT Regulations, the entity is under an obligation to make the necessary disclosures in the prescribed reporting format to the Company within two working days of such change in shareholding.

**-----------------------------------------------------------------**

Q. I am a shareholder in abc company with a shareholding of 10%. I recently acquired a few more shares which has increased my shareholding by 5%, bringing it to a total of 15%. What all disclosures do I need to make?

**Your Answer:**

A. Takeover Code: Acquisition of 5 per cent and more shares or voting rights of a company. 7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

**Model Version1 Answer:**

disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights

**-----------------------------------------------------------------**

Q. PQR, a corporate entity has purchased 8986 shares and sold 928600 shares of ASQ. PQR also purchased 9,86,094 shares from off-market. As of 31st December, 2004, PQR was holding 9,86,094 shares which was which was 9.26% of the share capital of ASQ. By March 31st, its shareholding was reduced to 0. What all violations have been made?

**Your Answer:**

A. Violations - **Regulation 7(1) of the Takeover Code** mandates disclosure in case a person acquires more than 5% of the shares in a company. PQR clearly acquired more than 5% shares and failed to make the disclosure for the same.

It is also evident that as on December 31, 2004 PQR was holding 9,86,094 shares and by March 31, 2005, the shareholding had reduced to zero. 9,86,094 shares constitute 9.26% of the Target company and under **regulation 13(3) of PIT Regulations** any person who holds more than 5% of the share capital of a company has to disclose any change in that shareholding exceeding 2%.

PQR is liable for monetary penalty under **Section 15A (b) of the SEBI Act** which states 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 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;

Further, on the determination of the quantum of penalty under section 15A (b), it is required to consider the factors stipulated in section 15J of the Act, which reads as under:- Factors to be taken into account by the adjudicating officer. 15J. 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.

**Model Version1 Answer:**

The information received from the RTA reveals that the Agrawal Family had transferred their entire shareholding by off market trades before they started selling shares during the investigation period. Ms. Lata Agrawal sold 25,000 shares on 25 th February, 2005 in physical form, whereas Shri Vasudev Agrawal, Shri Shambhu Agrawal, Ms Indra Agrawal, and Shri Rajendra Agrawal dematerialized their shares on 8 th December, 2004 and sold the shares by off market trades during 24 th December, 2004 to 31 st December, 2004. During the investigation period Agrawal family traded from 2 nd March, 2005 to 11 th March, 2005 and together sold 1,07,000 shares when they were No holding a single share in their name. Hence the pool and demat account of the stock broker Ruchiraj Shares & Stock Brokers Pvt Ltd., was examined from which it was observed that the delivery for the shares sold by the Agrawal family was given by the following entities

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Q. GHI is a corporate entity that is a promoter of SPZ. As on March 2005, it held 2,30,59,317 shares constituting of 30.87% of the total shares. By the end of September 2005, its shareholding reduced by 1,41,92,187 to 19% . What all violations have been made?

**Your Answer:**

A. Regulation 13(3) of PIT Regulations: 13 (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 had been change in such holding from the last disclosure made under sub- regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding to voting rights in the company. Under this provision GHI was supposed to intimate the change in shareholdings within 4 working days which it failed to do.

Regulations 8(2) of the Takeovers Regulations: 8 (2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company. Under this provision, as a promoter GHI was supposed to declare its shareholding and voting rights within 21 days from financial year ending March 21 which again it failed to do.

Violation of the above provisions attracts penalty under Section 15A (b) of the SEBI Act which is reproduced as under: 15A. Penalty for failure to furnish information, return, etc. - 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.

**Model Version1 Answer:**

hus, the aforesaid violations by the Noticees make them liable for penalty under Section 15HA of SEBI Act, 1992 which read as follows: “Penalty for fraudulent and unfair trade practices 15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher. (B) NON-DISCLOSURE OF SHAREHOLDING Allegation 3: The shareholding pattern as disclosed by ALL to BSE for the quarters ended on September 30, 2003 and December 31, 2003 was as under: December 2003 September 2003 Category Number of Shares % Number of Shares % Indian Promoters 1156500 12.36 3024900 32.34 Foreign Promoters 17611 0.19 Private Corporate Bodies 2214187 23.67 980632 10.48 Indian Public 5332577 57.01 5330257 56.99 Clearing Member 627956 6.71 Grand Total 9353400 100 9353400 100 The Noticees reduced their holdings by 18,68,400 shares i.e. from 32.34% to 12.36% during the quarter ended December 2003. The Noticees had failed to inform the company and the stock exchange s about the change in the shareholding as per the provisions of Regulations 7(1A) read with 7(2) of SAST. Reply: In this regard we would like to submit that the promoters had duly informed the Company about the change in their shareholding as per the SAST Regulations 1997. It was the duty of the Company Secretary, Mr. Sanjib Jha to make due disclosures to the Stock Exchanges as required which he failed to make and did No inform us about his inaction. As substantiated earlier, on an enquiry at a later stage, it was found that he was a fake person. Thus, in view of the fact that the non-disclosure was No on the part of the promoters or Company but on the part of Mr. Sanjib Jha and hence it is herein requested to take a lenient view. In this regard it is further submitted that the documents are no more available with the Company as the same were destroyed in the water logging in the basement office. Findings: I find that the Noticees could No submit any documentary proof in regard to the disclosure reportedly made by them to the company under regulations 7(1A) and (2) of SAST due to the natural calamities. I have perused the documents submitted by the Noticees in support of their submissions. I find the following in the Investigation Report (Page 7): On our query, the company informed that the promoters of the company duly informed the company of the change in their shareholdings as per SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 1997 but all these documents records were destroyed got lost by them in a huge fire in their factory premises in Sohna, Gurgaon. They also submitted copy of fire report issued by fire station office. Further, due to water logging pursuant to torrential rains in Delhi during the year 2005, all the related documents of promoters stored in the basement of the residence of the promoters were also destroyed defaced. They also submitted copy of FIR lodged. However, the BSE confirmed that no disclosures were filed with the Exchange with regard to reduction of the holdings of the promoters and related entities. Further, based on the aforesaid communication of BSE, separate adjudication proceedings have been initiated against the company for failure to disclose the change in shareholding after receipt of the same from the shareholders resulting in non-compliance of regulations 7(3) of SAST and 13 (6) of PIT by the company. I am of the view that violation of regulations 7(1A) and (2) of SAST by the Noticees and 7(3) of SAST by the company, cannot co-exist. In the light of the above, I find merit in their submissions and hold that the alleged violation of regulations 7(1A) and (2) of SAST is No established.

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Q. TPR is a company that is listed on both BSE & NSE. STC is a promoter of TPR. TPR took out Rights Issue and through that allotted 16,49,653 partly paid-up shares to STC on 2nd October, 2012. Consequently, the total shares of STC increased from 1,03,18,427 constituting to 4.98% of the share capital to 1,19,68,080 shares constituting 5.06% of the total share capital of TPR. STC was informed about the allotment on 10th October, 2012. However, STC did not make disclosures about its increased shareholding under 13(1) of PIT Regulations and believed that since it was already a promoter of TPR, it instead made disclosure under 14(4A) of PIT Regulations. Accordingly it made disclosure under 13(4A) of PIT Regulations under Form D with a delay of 1 month and not under 13(1) of PIT Regulations under Form A. Is there any violation?

**Your Answer:**

A. As per regulation 13(1) of PIT Regulations, 1992, any person who holds more than 5% shares or voting rights in any listed company, shall disclose to the company the number of shares or voting rights held by such person on becoming the holder within two working days of the receipt of allotment of shares or acquisition of shares or voting rights. In the instant case, consequent to the allotment of shares pursuant to Rights Issue, shareholding of STC increased from 1,03,18,427 constituting 4.98% of the share capital of TPR to 1,19,68,080 shares constituting 5.06% of the share capital of TPR. The intimation of receipt of allotment was received by STC on October 10, 2012. STC having exceeded the benchmark limit of 5% as specified under regulation 13(1) of PIT Regulations, 1992, was required to disclose its shareholding to the company i.e. TPR on becoming such holder of 5% within two days from the receipt of intimation of allotment of shares.

Hon'ble Securities Appellate Tribunal (SAT) in Premchand Shah and Others V. SEBI dated February 21, 2011, wherein it was held that "When a law prescribes a manner in which a thing is to be done, it must be done only in that manner. Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments." Therefore, the obligation of STC to make disclosures under 13(1) of PIT Regulations, 1992 was independent of any obligation it may have felt to be under 13(4A) of PIT Regulations,1992. If a person or entity triggers both the regulations, the obligation to make disclosure is under both the regulations separately.

Even if disclosures made under 13(4A) of PIT Regulations were to be treated as disclosures made under 13(1) of PIT Regulations, 1992, as claimed by STC, no relief can be granted to the it for its non-compliance under regulation 13(1) of PIT Regulations, 1992, for the reason that even the disclosure under regulation 13 (4A) of PIT Regulations, 1992 was admittedly filed by STC with a delay of more than a month.

Monetary penalty will be imposed under section 15A(b) of SEBI Act, 1992, 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,- (a) ........................................................... (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.

**Model Version1 Answer:**

It was observed during examination that a) The Noticee is a promoter group entity of SPARL. b) Pursuant to the Rights Issue, SPARL had allotted 16,49,653 partly paid-up shares to the Noticee on October 03, 2012. Consequently, shareholding of the Noticee increased from 1,03,18,427 constituting 4.98% of the share capital of SPARL to 1,19,68,080 shares constituting 5.06% of the share capital of SPARL. The intimation of receipt of allotment was received by the Noticee on October 10, 2012

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Q. Mr. X is a promoter and managing director of GTF Pharmaceuticals. He has pledged certain shares of the company and the pledge on these shares was subsequently released. Mr. X had created a pledge 1,20,000 shares on 11.12.2012 and release of pledge of 5,00,000 shares had taken place on 27.12.2012. Later it was observed that shareholding of Mr. X was changed after some off-market transactions. Mr. X has contended that 1,20,000 shares were pledged with YZ Financial on 11.12.2012 and the said transaction was intimated to stock exchanges on 21.12.2012 and there was a delay of 3 days and the same may be condoned. On 27.12.2012 the pledge on 5 lakh shares were released by DTR and the same was duly intimated to stock exchanges on 04.01.2013. With respect to the off-market transaction, Mr. X has contended that the same was No an off-market transaction but was only a transfer from the his one DP account to its another DP account. It has been alleged that Mr. X did not make the requisite disclosures under Regulation 31(1) &31(2) read with 31(3) of the SAST Regulations, 2011 and Regulation 13(4) & (4A) read with 13(5) SEBI (Prohibition of Insider Trading) Regulations,1992 (PIT Regulations). Has the violation occurred? If yes, How much penalty should be imposed?

**Your Answer:**

A. SAST Regulation 31. Disclosure of encumbered shares. (1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified. (2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified. (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,â€” (a) every stock exchange where the shares of the target company are listed; and (b) the target company at its registered office.

PIT Regulations Regulation 13- Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies- Initial disclosure (1)............ (2)................. Continual Disclosure (4)Any person who is a director or officer 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 the shareholding or voting rights, if there has been a change in such holdings of such person and his dependants (as defined by the company) from the last disclosure made under sub- regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,0000 shares or 1% of total shareholding or voting rights, whichever is lower. (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. (5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of : (a) the receipt of intimation of allotment of shares, or (b) the acquisition or sale of shares or voting rights, as the case may be.

Mr. X has made necessary disclosures with respect to creation release of pledge and only a delay of 3 days has occurred. Hence, charges of SAST Regulations do not apply.

The off-market transaction did not constituted any change in shareholding in the company as the same was only a transfer from his one DP account to another DP account hence the same was not required to be reported. The charge of violation of the provisions of regulation 13(4) & (4A) read with 13(5) of PIT Regulations is No clearly made out.

**Model Version1 Answer:**

**NOTE: I split the query since the model doesn’t perform well with composite queries.**

**Q1. Fact + Has the violation occurred?**

In response to the allegations made in the SCN, the Noticee has contended that 1,20,000 shares were pledged with J M Financial on 11.12.2012 and the said transaction was intimated to stock exchanges on 21.12.2012 and there was a delay of 3 days and the same may be condoned. Regarding release of pledge on shares, the Noticee has contended that on 27.12.2012 the pledge on 5 lakh shares were released by IFCI Limited and the same was duly intimated to stock exchanges on 04.01.2013. With respect to the off-market transaction of 1,60,000 shares, the Noticee has contended that the same was No an off-market transaction but was only a transfer from the Noticee's one DP account to its another DP account. Regarding the off-market transaction of 5 lakh shares on 31.12.2012, the Noticee has contended that transfer of 4 lakh shares was made to Sarsen Securities Private Limited upon availing a loan by the Noticee and hence such a transaction will No have the effect of off-market transfer and has the effect of an ordinary pledge. The said transaction happened on 31.12.2012 and the same has been reported to the exchanges on 04.01.2013. The balance 1 lakh shares were lying with Destimoney.

**Q2. Fact + How much penalty should be imposed?**

Same answer as above

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Questions based on Case file No. (from the google drive link with all case orders)-

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