BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: Order/VV/AK/2021-22/14188]

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 PENALITIES) RULES, 1995.

In respect of:

Sohini Suppliers Private Limited

(PAN: AAHCS5733L)

In the matter of

Ashirwad Steels and Industries Limited

BACKGROUND

1. Securities and Exchange Board of India (Hereinafter referred as **"SEBI"**) conducted examination into the shareholding of the promoter group entity Sohini Suppliers Private Limited (hereinafter referred as "**Noticee/Sohini"**). From the examination, *prima facie*, it was observed that the Noticee is part of promoter Group and total shareholding of the promoter and promoter group was 54.11% as on December 31, 2016. Further, shareholding of the aforesaid entity increased from 4.95% (6,18,500 shares) to 9.87%(12,33,972 shares) in Ashirwad Steels & Industries Limited (hereinafter referred as **"Target Company/*Ashirwad"*)** on February 16, 2017 which was not disclosed by the Noticee in accordance with the provisions of regulation 29(2) read with 29(3)SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred as "***SEBI (SAST) Regulation 2011"***). Summary of the transactions are as follows:

Date of Acquisition	No. of shares acquired	percentage of shareholding post transaction	Due date of disclosure under regulation 29(2) read with 29(3)	Actual Date of Disclosure	No. of days delayed
16.02.2017	615472(4.93%)	9.87	20.02.2017	24.03.2017	32

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred as "***AO"***), *vide* order dated October 27, 2021, under Section 15 I of the 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) Rules, 1995 (hereinafter referred to as ***"Adjudication Rules")*** to inquire into and adjudge under the provisions of Section 15 A(b) of the SEBI act for the alleged violation of the provisions of regulation 29(2) read with 29(3) of SEBI (SAST) Regulation 2011 by Sohini.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated December 24, 2020 (hereinafter, "***SCN***") was issued to the Noticee under Rule 4(1) of the Adjudication Rules, calling it to show cause as to why an inquiry should not be held and penalty be not imposed on it under Section 15A(b) of the SEBI Act for alleged violation specified in the said SCN. In response to this, the Noticee vide its letter dated January 14, 2021 file its reply to the SCN. The Noticee made the following submissions in the its reply:

"

A. As per your said letter you have stated having enclosed five enclosures, the first one being BSE Email dated 21.06.2019 and the last one being (6th) NSDL letter dated August 2, 2018. It is regretted that the letter which we received vide speed post does not contain any of the said enclosures.

B. *It is a fact that we had acquired, 6,15,472 equity shares (4.93% of the total equity shares Ashirwad Steels & Industries Limited) on 16.02.2017 and intimation of the same was duly given to the said Company M/s Ashirwad Steels & Industries Limited vide our letter dated 18.02.2017 (copy enclosed) with a copy marked to BSE Ltd, in terms of compliance of SEBI (SAST) Regulation 2011.*

C. *As per PARA 5 of your show cause notice you have mentioned that the target company (Ashirwad Steels & Industries Limited) has received the disclosures from us on February 18, 2017.*

D. *As per PARA 7 of your notice we had made the transaction on 16.02.2017 and the disclosure was required by February 20, 2017 and we had made the necessary disclosure on 18.02.2017 itself and hence we have not made any violation of the SEBI (SAST) Regulation 2011.*

E. *In the view of the above submissions, we request your goodself to kindly drop/withdraw your aforementioned SCN against us."*

4. Accordingly, after considering Noticee's reply and material available on record, an opportunity of personal hearing was provided to the Noticee on March 25, 2021 in terms of rule 4(3) of Adjudication Rules and all the enclosures (i.e. relied upon documents) to the SCN were forwarded to the Noticee *via* email dated March 16, 2021. Thereafter, the Noticee's director *viz*. Mr. Dalbir Chhibbar had sought several adjournments of hearings scheduled on March 25, 2021, April 07, 2021 and April 22, 2021, respectively, on medical grounds and Covid related issues in his family. Subsequently, final opportunity of personal hearing was extended to the Noticee and hearing was fixed on September 28, 2021, wherein, it was stated that "in case of absence at the said hearing, the matter shall be decided based on available records". However, despite seeking

multiple adjournments the Noticee failed to avail the hearing opportunity provided to him during the instant proceedings.

5. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticee ample opportunities for replying to the SCN and of being heard. However, the notice has failed to avail the opportunity of personal hearings in the matter. Therefore, I deem it appropriate to decide the matter on the basis of facts/ material available on record and reply submitted by the Noticee.

ISSUES FOR CONSIDERATION AND FINDINGS

6. I have carefully perused the written submissions made by the Noticee and documents available on record, and the issues that arise for consideration in the present case are:

   A. Whether the Noticee has violated the provisions of regulation 29 (2) read with 29 (3) of SEBI SAST Regulations.

   B. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the SEBI Act.

   C. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act.

7. Before moving forward, it is pertinent to refer to the relevant provisions of *SEBI (SAST) Regulation 2011* which reads as under:

SAST Regulations 2011

Regulation 29

(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 or the disposal 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

A. The first issue for consideration is whether the Noticee has violated Regulations 29 (2) read with 29 (3) of SEBI SAST Regulations.

8. I note that, the Noticee was the part of Promoter Group during relevant time and the total shareholding of promoter and promoter group was 54.11% on Dec 2016. It is an admitted position that the Noticee had acquired, 6,15,472 equity shares (4.93% of the total equity shares of Ashirwad) on February 16, 2017. Pursuant to aforesaid acquisition, shareholding of the Noticee in the target company increased from 4.95% (6,18,500 shares) to 9.87% (12,33,972 shares). Accordingly, in terms of provisions of the regulation 29(2) read with the regulation 29(3) of the SEBI (SAST) Regulation 2011, the due date for the aforesaid disclosure is February 20, 2017 (hereinafter referred as "***cutoff date***").

9. The Noticee has submitted that, it had made the necessary disclosure under the SEBI (SAST) Regulation 2011 on February 18, 2017 and hence, it had not violated the provisions of the SEBI (SAST) Regulation 2011. The Noticee has placed reliance on its letter dated February 18, 2017 forwarded to the

exchange, wherein, necessary disclosures with reference to impugned transaction were provided under the SEBI (SAST) Regulation 2011. In this regard, I note that the Noticee had not provided any proof for dispatch/ for delivery, of the aforementioned letter to the BSE. Further, BSE vide email dated June 21, 2019, had confirmed that, it received disclosures from target company on March 24, 2017 under the SEBI (PIT) Regulations, 2015. I also note that, vide email dated September 26, 2018, Ashirwad informed to the SEBI that, it received requisite information from the Noticee on February 18, 2017 and it was disclosed to BSE on March 23, 2017. In this regard copies of BSE acknowledgements for disclosures were provided as a matter of record. Considering the aforementioned facts and circumstances, I am of view that the information regarding acquisition by the Noticee came into public domain only on March 24, 2017. Therefore, the Noticee contention that it had made all the disclosure as on February 18, 2017 itself and have not made any violation of SEBI (SAST) Regulation 2011, is bereft of any merits. In this regard, I would like to refer the judgement of Hon'ble Securities Appellate Tribunal ("**SAT**") order in the matter of **Mega Resources Ltd. v. SEBI (Appeal No. 49/2001),** wherein, it was held that:

> *"…..Thus the requirement is that the information should reach the person to whom itis meant. The obligation does not end by simply posting the information in a letterbox…. The agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. The Noticees have not placed on record any acknowledgement received from the Stock Exchanges in this regard to the disclosures that were allegedly to have been sent to BSE…."*

10. I further note that, the requirement to submit disclosures under the SEBI (SAST) Regulation 2011 are sacrosanct as they enable the public to make an informed investment decision in a timely manner. By not submitting the requisite disclosures in the time specified, the concerned persons deprive the investing

public of the statutory rights available to them. It also enables the regulator to properly monitor the transactions in the capital market to effectively regulate the same. In view of the above, I conclude that the Noticee has violated the provisions of regulation 29(2) read with 29(3) of SEBI (SAST) Regulation 2011.

B. **Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the SEBI Act.**

11. I am of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary. For this purpose, reference has been made to the Hon'ble Supreme Court's Judgement ***SEBI vs. Shriram Mutual Fund and Anr.*** {(2006) 5 SCC 361}

> *"…. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary…"*

12. Further, Hon'ble SAT in the matter of **Virendrakumar Jayantilal Patel v. SEBI (Appeal No. 299 of 2014 dated October 14, 2014)** had held that,

> *"obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make the disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make the disclosures."*

13. In view of the foregoing, I am convinced that the Noticee is liable for monetary penalty under Section 15A(b) of SEBI Act for violation of regulation 29(2) read with 29(3) of SEBI (SAST) Regulation 2011. The provisions of Section 15A(b) of the SEBI Act, 1992 read as under:

<u>Penalty for failure to furnish information, return, etc.</u>

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 [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]];

C. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act.

14. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act which reads as follows: -

Factors to be taken into account by the adjudicating officer.

Section 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.*

Explanation. —For the 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.

15. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, and suffered by the investors as a result of the Noticee's failure. I also note that no prior default of the Noticee is available on record. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticee.

ORDER

16. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Rules, I hereby impose a penalty of **Rs 1,00,000/-** (Rupees One lac only) on the Noticee i.e. **Sohini Suppliers Private Limited**, in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 and the said penalty commensurate with the default committed by the Noticee.

17. The Noticee shall remit / pay the said amount of penalty within 45 days of 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 online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT > Orders > Orders of AO > PAY NOW.

18. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department -DRA-3), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 –A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount	

19. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

20. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai **Vijayant Kumar Verma**

Date: November 17, 2021 **Adjudicating Officer**