BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/GG/VP/2022-23/16624

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) RULES, 1995

In respect of:

Jesudas Premkumar Sebastian

(PAN: ALIPP4277B)

In the matter of Acewin Agriteck Limited

A. FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) received a letter No. L/SURV/OFL/SG/2122-EA-653/2021-22/SEBI/16, dated 10.12.2021 from BSE inter alia intimating that during their investigation, they observed that from 28.06.2021 to 23.08.2021, Jesudas Premkumar Sebastian (hereinafter referred to as **'Noticee'**) was one of the promoters of Acewin Agriteck Limited (hereinafter referred to as '**Target Company**') and had sold altogether 59,34,400 shares in multiple instances, for which disclosures under Regulations 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **'SAST Regulations, 2011'**) were required to be filed. However, the Noticee did not

make the required disclosures. The details of non-compliance by the Noticee is given below:-

Table No: 1

Sr. No.	Date of transaction	Number of shares sold	%	Shareholding after sale	Change in shareholding	Due date for disclosure u/r 29(2)
1.	28/06/2021	5,00,000	4.87%	53.96%	4.87%	01/07/2021
2.	28/06/2021	5,00,000	4.87%	49.09%	4.87%	01/07/2021
3.	05/07/2021	3,74,400	3.65%	45.44%	3.65%	08/07/2021
4.	06/07/2021	1,24,800	1.22%	44.23%	1.22%	Not applicable
5.	07/07/2021	2,20,800	2.15%	42.07%	2.15%	12/07/2021
6.	08/07/2021	96,000	0.94%	41.14%	0.94%	Not applicable
7.	09/07/2021	2,40,000	2.34%	38.80%	2.34%	14/07/2021
8.	22/07/2021	67,200	0.65%	38.15%	0.65%	Not applicable
9.	26/07/2021	86,400	0.84%	37.30%	0.84%	Not applicable
10.	27/07/2021	2,01,600	1.96%	35.34%	1.96%	30/07/2021
11.	28/07/2021	19,200	0.19%	35.15%	0.19%	Not applicable
12.	29/07/2021	19,200	0.19%	34.97%	0.19%	Not applicable
13.	30/07/2021	96,000	0.94%	34.03%	0.94%	Not applicable
14.	04/08/2021	96,000	0.94%	33.09%	0.94%	09/08/2021
15.	05/08/2021	48,000	0.47%	32.63%	0.47%	Not applicable
16.	06/08/2021	4,80,000	4.68%	27.95%	4.68%	11/08/2021
17.	09/08/2021	3,26,400	3.18%	24.77%	3.18%	12/08/2021
18.	10/08/2021	3,64,800	3.55%	21.22%	3.55%	13/08/2021
19.	11/08/2021	2,20,800	2.15%	19.06%	2.15%	16/08/2021
20.	12/08/2021	3,07,200	2.99%	16.07%	2.99%	17/08/2021
21.	13/08/2021	1,44,000	1.40%	14.67%	1.40%	Not applicable
22.	16/08/2021	1,72,800	1.68%	12.98%	1.68%	20/08/2021
23.	17/08/2021	96,000	0.94%	12.05%	0.94%	Not applicable
24.	18/08/2021	1,53,600	1.50%	10.55%	1.50%	23/08/2021
25.	20/08/2021	3,93,600	3.84%	6.72%	3.84%	25/08/2021
26.	23/08/2021	5,85,600	5.71%	1.01%	5.71%	26/08/2021

B. APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed me, as the Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the **'SEBI Act'**) read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **'SEBI Adjudication Rules'**) *vide* order dated 09.02.2022 to inquire into and adjudge under section 15A(b) of the SEBI Act, with respect to the allegations against the Noticee.

C. SHOW CAUSE NOTICE, HEARING AND REPLY

3. A notice dated 21.03.2022 was issued to the Noticee under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be initiated against him and why penalty should not be imposed against him under section 15A(b) of the SEBI Act for the alleged violation of the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011.

4. The Show Cause Notice (hereinafter referred to as "**SCN**") issued to the Noticee, *inter alia* alleged, that the Noticee has failed to make the required disclosures in respect of the sale of shares and thereby has violated provisions of Regulation 29(2) read with regulation 29(3) of SAST Regulations for the transactions done on various dates shown in Table No.1.

5. The Noticee vide email dated 09.05.2022 submitted his reply to the SCN attaching the scanned copies of (i) share sale intimation from the Noticee to the company, (ii) filings of the share sale by the Company and (iii) revised filing for 2 corrections.

6. In the interest of natural justice an opportunity of hearing was granted to the Noticee on 13.04.2022 vide hearing notice dated 08.04.2022. However, the Noticee did not avail the opportunity of the hearing. Thereafter, two more opportunities of hearing were granted to the Noticee on 19.04.2022 and 06.05.2022, which were again not availed by the Noticee.

D. CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the documents forwarded by the Noticee in response to the SCN with respect to the alleged violation of disclosure provisions contained in SAST Regulations 2011.

8. In this case, at the outset, it will be appropriate to refer to the relevant provisions of Regulation 29(2) read with 29(3) of SAST Regulations, which reads as under:

Regulation 29(1), 29(2) and (3) of SAST Regulations

Disclosure of acquisition and disposal.

29 (1) Any acquirer, together with persons acting in concert with him acquiring shares or voting rights in a target company, which taken together aggregates to five percent 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(2) Any person together with persons acting in concert with him, holds shares or voting rights entitling them to five percent 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 percent, if there has been a 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.

29(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.

4….. ”

9. The issue that arises for consideration is whether the Noticee had violated the provisions of disclosures contained in Regulation 29(2) read with Regulation 29(3) of SAST Regulations? If yes, ascertain the Noticee's liability for monetary penalty under section 15A(b) of the SEBI Act and the quantum thereof?

CONSIDERATION:

10. The Noticee was one of the promoters of the Target Company and had sold altogether 59,34,400 shares in multiple instances during the period 28.06.2021 to 23.08.2021 as detailed in Table No. 1 above. It is seen from the shareholding pattern of the Promoters as available on the exchange platform that as at the end of March 2021, the Noticee was holding a total of 60,38,160 shares. The aforesaid sale transactions obligated the Noticee to make necessary disclosures to the Target Company and to the Exchanges where the shares of the company are listed. It was alleged that Noticee failed to make timely disclosures in terms of Regulation 29(2) read with Regulation 29(3) of SEBI SAST Regulations.

11. In terms of Regulation 29(2) read with regulation 29(3) of SAST Regulation, the Noticee who was holding 58.83% as on 28/06/2021, was required to disclose the number of shares or voting rights held and change in shareholding or voting rights, if there has been change in such holdings from the last disclosure made and such change exceeds two percent of total shareholding or voting rights in the target company, to the company and to every stock exchange where the shares of target company was listed within two working days from the date of such change. I note from Table No. 1 that the Noticee had sold 5,00,000 shares each in two tranches on 28.06.2021 totally comprising of 9.74% of the shareholding of the Target company and his shareholding after the sale decreased from 58.83% to 53.96% in the first tranche and to 49.09% in the second tranche on the same day. This had, in fact, triggered the obligation to make requisite disclosures to the Target Company and BSE under regulation 29(2) within two working days as stipulated under regulation 29(3) of the SAST Regulations. Thereafter on all days shown in Table No.1, the Noticee was obligated to disclose the change in the shareholding within two days. I note that the reference point for calculating whether the change in the shareholding has exceeded 2% or not, for the purpose of disclosure under sub-regulation (2) of regulation 29, is the last disclosure made under sub-regulation (1) or (2) of regulation 29. It is reiterated that the date of last disclosure was 31 March, 2021.

12. I note from the reply of the Noticee that he had sent letters of different dates informing the target company regarding the sale of shares. The copies of such handwritten letters stated to have been given to the company were attached. I note that the said set of letters though bears an acknowledgment stamp of the company does not show any date of receipt from the Company's side and hence is not a foolproof piece of evidence. Moreover, I note that the Noticee is a promoter-director of the company. I note from the records that the company vide letters dated 13.07.2021 and 14.09.2021 had made consolidated disclosures under Regulation 7(2) and 6(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations'**). I note that the

Noticee has consciously remained silent on the issue of disclosure in his reply and has merely forwarded copies of the so called intimations given to the company and the company's consolidated disclosures. In my opinion, the Noticee has attempted to portray that he had informed the company from time to time about the sale of shares, based on which the Company has made the consolidated disclosures under Regulation 7(2) and 6(2) of PIT Regulations. Even assuming that the proof of intimation of Company is genuine, the Noticee was also under an obligation to inform the exchange where the shares of the target company are listed, in terms of Regulations 29(3)(a). The promoter's duty to disclose does not end with the disclosure to the target company. Be it an acquisition or disposal, the mandate under the provision compels the promoter, holding more than five percent of shares/voting rights, to disclose the disposal of shares, within two working days from the day on which the change in shareholding exceeded two percent, and such obligation of the promoter cannot be fulfilled or substituted with the disclosure made by the company under PIT Regulations.

13. It is pertinent to mention that the disclosure requirements under the respective regulations serve very important purposes. The intimation to the stock exchange ensures that the investing public get a sense of the direction in which the promoters of the company or persons acting in concert are moving on a day-to-day basis. On a perusal of the prescribed format for disclosure under regulation 29(2), it is seen that the Noticee needs to identify as a promoter, mention the date of sale of shares along with the quantum, indicate his shareholding before sale and also the mode of sale (e.g. open market/off-market/inter-se transfer etc.). All these details are relevant to be disclosed along with the frequency of the sale of transaction which would have come to light if the disclosures been done within the time lines prescribed.

14. Timely disclosures of the details of the shareholding of the persons acquiring/transferring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions, as held by

the Hon’ble Appellate Tribunal in many cases. For instance, the Hon'ble SAT in the matter of Coimbatore Flavors & Fragrances Ltd. vs SEBI *(Appeal No. 209 of 2014 order dated August 11, 2014), has held that “Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Again in the matter of Milan Mahendra Securities Pvt. Ltd. vs. SEBI (Appeal No. 66 of 2003), the Hon’ble SAT, vide its order dated April 15, 2005 held 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.”*

15. In the instant case, I find that the Noticee-promoter has drastically brought down his total shareholding from 58.83% to 1.01% during the period 28.06.2021 to 23.08.2021. I am unable to rely on the copies of intimations given by the Noticee to the company to come to a finding that the Noticee has made timely disclosures to the company. Under Regulation 29(2) and 29(3) of the SAST Regulations, the disclosures to both the company and the stock exchange are mandatory and the statutory timeline stipulated therein has its own significance in guiding the public investors. In the facts and circumstances of this case, I find that the Noticee has certainly failed to comply with the disclosure mandate contained in the provisions of Regulation 29(2) read with 29(3) of the SAST Regulations. Considering these facts and circumstances, I hold that this case deserves imposition of monetary penalty upon the Noticee under Section 15A(b) of the SEBI Act, which reads as below:-

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,

(a)……

(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 [or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], 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)….."

16. I am compelled to determine the monetary penalty by taking into consideration the fact that the Noticee is the promoter himself and that he brought down his shareholding from 58.83% to close to 1% during the brief period of around two months (28.06.2021 to 23.08.2021) without making any disclosure to the public. His obligation to make disclosures were triggered right from 28.06.2021 and continued thereafter. I bear in mind the fact that the Noticee as the promoter-director had a greater responsibility to ensure compliance with the applicable disclosure requirements and hence needs to be visited with a proportionate amount of penalty.

ORDER

17. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) under Section 15 A(b) on the Noticee.

18. 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 e-payment facility into Bank Account, the details of which are as follows:

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

19. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in following table should be sent to "The Division Chief, EFD-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G"

Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the 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)	

20. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **May 30, 2022**
Place: **Mumbai**

GEETHA G.
ADJUDICATING OFFICER