BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SS/RK/2023-24/29776]

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:

Panafic Industries Limited

(PAN: AAACP3700B)

In the matter of Mahavir Industries Limited.

A. FACTS OF THE CASE

1. Bombay Stock Exchange Limited (hereinafter referred to as **"BSE"**) vide letter dated December 24, 2021, had informed the Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) that Panafic Industries Limited (hereinafter referred to as **"Noticee"**) is appearing in the shareholding pattern of Mahavir Industries Limited (hereinafter referred to as **"Target Company"**) for the quarter ended September 2021 and was holding 12.31% of the total shares holding of the Target Company. BSE further informed that the Noticee had sold shares from October 01, 2021, to November 30, 2021, for which disclosures was required to be filed under Regulation 29(2) read with 29(3) of SAST Regulations. BSE further informed that as per their records, the Noticee had not filed any disclosures with respect to the sale transactions done during the period October 01, 2021, to November 30, 2021.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Pursuant to the above SEBI initiated adjudication proceedings and appointed the undersigned, 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 September 27, 2023, to inquire into and adjudge under section 15A(b) of the SEBI Act, with respect to alleged violation of Regulation 29(2) read with 29(3) of SAST Regulations.

C. SHOW CAUSE NOTICE, HEARING AND REPLY

3. The SCN No. AO/SK/VP/41625/1/2023 dated October 09, 2023, was issued to the Noticee under rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**"), to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15A(b) of SEBI Act for the alleged violation stated in the said SCN.

4. An opportunity for a personal hearing was granted to the Noticee on 06.11.2023; vide hearing notice dated 27.10.2023. The Authorised Representative appeared on behalf of the Noticee on November 06, 2023, and reiterated the submissions made by the Noticee vide replies dated 06.11.2023 and 30.10.2023.

5. The Noticee vide letter dated October 30, 2023, had made its detailed submissions. The relevant portion of the replies submitted by the Noticee is summarized as under:

    i. The Noticee has submitted that there is a delay of about 2 years in issuing the SCN. The Noticee has relied on the following Case Laws on the issue of delay:

        a. Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim.

b. Hon’ble SAT Order in Rajeev Bhanot & Anr. Versus SEBI,

ii. Noticee submitted that they had already initiated a summary settlement procedure and had paid Rs 3 lacs to SEBI. However, due to some misunderstanding on the Noticee part on account of failure to submit the application, the settlement procedure could not materialize.

iii. The Noticee submitted that it was holding 12.31% of the total shares of Mahavir Industries Limited since 2013 and subsequently, Noticee had sold these shares during November 2021.

iv. Noticee submitted that during the relevant time, there was a Covid 19 pandemic all over the world and also in India on account of the Omicron virus. It is submitted that Noticee was functioning with skeleton staff during this period and operating with many restrictions. Unfortunately, the Noticee's Company Secretary was infected with Coronavirus. Hence, the Company Secretary was on leave and was not attending the office work and the whole scenario was not in her knowledge. Hence, the delay was inadvertent.

v. The Noticee submitted that the default is of a technical nature which the Noticee overlooked by accident and it was not a deliberate attempt to achieve any other ulterior motive.

vi. Noticee has submitted that it had not made any disproportionate gain or gained any unfair advantage, whether quantifiable or otherwise. Further, no loss has been caused to any investor or group of investors as a result of the alleged default is not in a repetitive nature.

MITIGATING FACTORS

vii. Noticee submitted that SEBI ought to even consider the situation of COVID-19 pandemic and the Omicron wave prevalent during the same period. Any penalty or adverse direction will have a catastrophic effect on Noticee, causing dire consequences leading to the financial death of the Noticee and also a hardship on its employees. Even the shareholders will also be adversely affected. Thus, for these reasons alone no penalty is called for.

viii. The Noticee has relied on the judgment of Hon'ble Securities Appellate Tribunal in P. G. Electroplast Ltd. & Ors. V. SEBIin Appeal no. 281 of 20172 with respect to the quantum of the penalty.

ix. The Noticee has further relied on the following orders of Adjudicating Officers with respect to the quantum of the penalty.

a. In the matter of M/S. Rathi Bars Limited Adjudication Order No. EAD2/AO/DSR/BKM/647/2017.

b. In the matter of M/ s. Inanna Fashion and Trends Limited (earlier known as Frontline Business Solutions Limited) Adjudication Order No. GAD12/SM/217-222/201B. In the matter of Tricom Fruit Products Ltd. Adjudication Order No. RA/JP/310-319/2018.

c. In the matter of Marg Ltd Adjudicating Order No. EAD/PM-RR/AO/53-56/2017-18.
d. In the matter of Dune Mercantile Ltd Adjudicating Order No. Order/SM/DD/202122/15785-15787

x. The Noticee submitted that on account of Covid 19 outbreak the Hon'ble Supreme Court in SUO MOTU WRIT PETITION (C) NO. 3 OF 2020 vide its Order dated January 10, 2022 has extended the limitation period wherein the period between 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Relying on the said judgment the Noticee has submitted that there is no delay on the part of Noticee in compliance and no penalty or any other action is called for when the compliance has already been done by the Noticee.

xi. The Noticee had reiterated the above submissions in the additional submissions sent vide email dated 10.11.2023.

6. Taking into account the aforesaid facts, I am of the view that the principles of natural justice have been duly followed in the matter by granting the Noticee, an opportunity for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of the facts/material available on record and the replies submitted by the Noticee.

D. CONSIDERATION OF ISSUES AND FINDINGS

Issue No. I: Whether Noticee has violated the provisions of Regulations 29(2) read with Regulations 29(3) of SAST Regulations as stated in the SCN?

Issue No. II: Does the violation, if any, on the part of the Noticee attract a monetary penalty under Section 15A(b) of the SEBI Act?

Issue No. III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

7. Before proceeding further, I would like to refer to the relevant provisions of the alleged provisions as under:

   <u>Regulation 29(2) and (3) of SAST Regulations</u>

   Disclosure of acquisition and disposal.

   29 (1)…..

   (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 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.

   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….. "

8. First, I would like to deal preliminary issue with respect to the delay in issuing the SCN. I note from the replies of the Noticee that it had contended that there is a delay of about 2 years in issuing the SCN. I note from the records that BSE vide letter dated 24.12.2021 had informed that the Noticee had not made the required disclosure for the sale transactions done in the month of November 2021. SEBI vide emails dated 10.02.2022 and 03.03.2022 had sought confirmation from the Noticee regarding the disclosure made for the sale of shares in the month of November 2021. In

response to the above emails, the Noticee vide email dated 07.03.2022 informed SEBI that it had made the required disclosure on 03.03.2022.

9. Thereafter, SEBI issued a summary settlement Notice vide letter dated 24.05.2022. SEBI vide email dated 03.10.2022 had sought relevant documents such as ITR of the last three FYs duly notarized Undertaking and Waivers as required while filing the settlement application. I note that reminder letters were sent to the Noticee on 10.10.2022 and 31.10.2022. The Noticee had replied to the said emails on 11.11.2022 wherein it appears that certain documents were enclosed. However, the Noticee did not provide the required documents such as ITR copies to SEBI. In view of the above, I find the submissions of the Noticee are devoid of merits as it is very clear from the communication trails the Noticee had the knowledge of the consequences of non-availing the settlement proceedings and therefore, I find that there is no delay in issuing the SCN.

Issue No. I: Whether Noticee has violated the provisions of Regulations 29(2) read with Regulations 29(3) of SAST Regulations as stated in the SCN?

10. With respect to the captioned violation, I note from the SCN that it was alleged that the Noticee had not made the required disclosure under Regulation 29(2) read with Regulation 29(3) of SAST Regulations for the sale of shares on 03.11.2021, 16.11.2021 and 24.11.2021 whereby the shareholding was reduced from 12.31% to 4.77% and on all the three days there was change in shareholding of more than 2%. The details of the change in shareholding and the delay in making disclosures are given in the table below:

Sr. no.	Date	Due date for compliance	Delay in days	Shareholding as on given date	Change in shareholding
1	03/11/2021	05/11/2021	119	9.82%	-2.49%
2	16/11/2021	18/11/2021	106	7.13%	-2.69%
3	24/1112021	26/11/2021	98	4.77%	-2.36%

11. In terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulation, the Noticee who was holding 9.82% as on 03.11.2021, 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 in the shareholding. I note from the above table that the Noticee had sold 2.49% on 03.11.2021, 2.69% on 16.11.2021, and 2.36% on 24.11.2021 of its shareholding and there was a change in the shareholding by more than 2%. I note that Noticee's shareholding decreased from 9.82% to 7.12% and to 4.77% respectively. 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.

12. I note from the reply of the Noticee that it held 12.31% of the total shares of Mahavir Industries Limited since 2013 and subsequently, it had sold these shares in October and November 2021. Noticee further submitted that the default is of a technical nature which it overlooked by accident and it was not a deliberate attempt to achieve any other ulterior motive.

13. In view of the above admission by the Noticee, it is established that the Noticee has violated the provisions of regulation 29(2) read with regulation

29(3) of the SAST Regulations for the sale transactions done on 03.11.2021, 16.11.2021, and 24.11.2021.

Issue No. II: Does the violation, if any, on the part of the Noticee attract a monetary penalty under Section 15A(b) of the SEBI Act?

14. As it has been established in the preceding paragraphs that the Noticee has violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, the Noticee is thereby liable for monetary penalty under Section 15A(b) SEBI Act.

15. The provision of Section 15A(b) is reproduced as under:

<u>SEBI Act, 1992</u>

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 [1][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)….."

Issue No. III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

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

[1] Inserted by the Finance Act, 2018 w.e.f. 08-03-2019.

SEBI Act

"15J. Factors to be taken into account by the adjudicating officer
While adjudging quantum of penalty under Section 23-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."

17. I note from the provisions of SAST Regulations that 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. 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."*

18. Further, I note that there is no material on record to indicate any specific disproportionate gains or unfair advantage which accrued to the Noticee, or loss suffered by the investors. Further, Noticee had submitted that due to the COVID-19 pandemic, Noticee was functioning with skeleton staff during this period and operating with many restrictions and Omicron wave

prevalent during the same period. I note that during the Covid period, the stock market was functioning and the Noticee had also traded during the Covid period. Further with respect to the Company Secretary was on leave and was not attending the office work, no evidence was submitted by the Noticee. It is pertinent to state that the Noticee could have made the disclosures through either physical or digitalized mode. However, Noticee had finally made the disclosures on 03.03.2022 with the delay 119 days for the transaction dated 03.11.2021, with the delay of 106 for the transaction dated 16.11.2021 and with the delay of 98 days for the transaction dated 24.11.2021 to BSE after being pointed out by SEBI vide email dated 10.02.2022 and 03.03.2022. Hence, the submission of the Noticee is not tenable.

19. Considering all the mitigating factors, I impose a nominal penalty on the Noticee.

ORDER

20. After taking into consideration the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) under Section 15 A(b) of SEBI Act which will commensurate with the violations committed by the Noticee in this case.

21. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order through the 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

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

23. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date: November, 28 2023	**SANTOSH KUMAR SHARMA**
Place: Mumbai	**ADJUDICATING OFFICER**