BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/BM/DS/2021-22/14254]

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) RULES, 1995

In respect of

Mr. Anil Kumar Sharma
(PAN:CGUPS0090N)

In the matter of
Sanco Industries Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter being referred to as 'SEBI') conducted an examination in the scrip of Sanco Industries Limited (herein after referred to as 'the Company/ Sanco'), a company listed on NSE Limited (herein after referred to as 'NSE'), for the period January 01, 2016 to November 23, 2016 (herein after referred to as 'period of examination'). During investigation it was observed that Mr. Anil Kumar Sharma (herein after referred to as 'Noticee') did not make disclosures to the Company under Regulations 29(2) and 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (herein after referred to as 'SEBI SAST Regulations, 2011') and Regulation 7(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (herein after referred to as 'SEBI PIT Regulations, 2015').

2. In view of the above, SEBI initiated adjudication proceedings under the provisions of Section 15A(b) of the SEBI Act, 1992 against the Noticee for the aforementioned alleged violations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide Order dated September 15, 2021, the undersigned was appointed as the Adjudicating Officer (**'**AO**'**) under Section 19 read with Section 15-I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to enquire into and adjudge under the provisions of Section 15A(b) of the SEBI Act, 1992, the aforesaid alleged violations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice no. EAD/BM/DS/27666/2021 dated October 08, 2021 (hereinafter referred to as 'SCN') was issued by the undersigned to the Noticee under the provisions of Rule 4(1) of the Adjudication Rules read with section 15-I of the SEBI Act, calling upon the Noticee to show cause as to why an inquiry should not be held against him for the aforesaid alleged violations of provisions of Regulations 29(2) and 29(3) of SEBI SAST Regulations, 2011 and Regulation 7(2) of the SEBI PIT Regulations, 2015 and why penalty, if any, should not be imposed on him under Section 15A(b) of the SEBI Act. The said notice was delivered to the Noticee on October 08, 2021.

5. Vide his mail dated October 13, 2021, the Noticee made the following submissions: *"As per the captioned subject, I, Anil Kumar Sharma hereby submit that I am not an Indian resident but a Canadian Citizen since 1998. Since then I visited India only in 2009-2014 for job purposes. However, I left my job in 2014 and went back to Canada.*

For this reason of shifting back to Canada, I transferred my 247600 equity shares to my close relative (Brother in Law) Mr. Sanjay Gupta. No consideration was there in this transfer of 247600 shares as it was a gift.

Thereafter, I left India and settled back in Canada. Since then I have never been to India. Hence I have no address in India.

Due to my shifting back to Canada after leaving my job & transfer of shares and then never been to India, I could not file returns/disclosures under Regulation 7(2)(a), 7(2)(b), 29 (2) and 29(3) of Securities and Exchange Board of India (Substantial Acquisition and Takeover Code), Regulations 2011 (SAST).

However, I did not have any malafide intention for not filing the disclosure or hiding any detail Accordingly, I request your good office not to initiate any enquiry against me as I am ready to file all the applicable disclosures now and to give any other information that SEBI may require.

Please accept our clarifications and do not initiate any enquiry."

6. In the interest of natural justice and in order to conduct an enquiry in terms of Rule 4(3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on November 01, 2021, vide Hearing Notice dated October 28, 2021. The Noticee requested adjournment and nominated an authorized representative (herein after referred to as 'AR') to appear on his behalf. Vide mail dated November 01, 2021, he was granted another hearing on November 09, 2021.

7. On the date of hearing, the AR appeared on behalf of the Noticee. At the time of hearing, the AR was explained the purpose of the hearing and the charges levelled against the Noticee. The AR, in her submissions, explained that the off-market transaction was executed between the promoters; no public was involved; money was not exchanged, as it was transfer by way of gift; that the Noticee was a close relative (brother-in-law) of Mr. Sanjay Gupta (Managing Director of Sanco Industries Limited). As the Noticee was permanently shifting outside India, he had

transferred the shares by way of gift, i.e. without any monetary consideration and thus, could not make any submissions.

8. The AR requested the undersigned for allowing time till November 19, 2021 to discuss the hearing proceedings with the Noticee and confirm if he has any other submissions to be made. AR's request was acceded and time was given till November 19, 2021 to make additional submissions.

9. The AR, on behalf of the Noticee, vide mail dated November 18, 2021, requested the undersigned to consider the written reply vide mail dated October 13, 2021 and explanations made at the time of hearing as his final submission in the matter.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

10. After perusal of the material available on record, I have the following issues for consideration.

    ISSUE I: Whether Noticee has violated Regulation 29(2) and 29(3) of the SEBI SAST Regulations, 2011 and Regulation 7(2)(a) and Regulation 7(2)(b) of the SEBI PIT Regulations, 2015 ?

    ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15A(b) of the SEBI Act?

    ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

11. Before moving forward it is pertinent to refer to the relevant provisions of SEBI SAST Regulations, 2011 and SEBI PIT Regulations, 2015 which read as under:

SAST Regulations, 2011

Disclosure of acquisition and disposal

29(2): *Any person 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.*

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 85 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.

<u>SEBI (Prohibition of Insider Trading) Regulations, 2015</u>

Disclosures by certain persons.

7(2) Continual Disclosures.

(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

(b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

FINDINGS

12. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder:

ISSUE I. Whether Noticee has violated Regulation 29(2) and 29(3) of the SEBI SAST Regulations, 2011 and Regulation 7(2)(a) and 7(2)(b) of the SEBI PIT Regulations, 2015?

13. It was alleged in the SCN that the Noticee violated provisions of Regulation 29(2) and 29(3) of the SEBI SAST Regulations, 2011 and Regulation 7 (2)(a) and 7(2)(b) of SEBI PIT Regulation 2015 by not disclosing transactions made by him on April 20, 2016. It was observed that the Noticee, the promoter of the Company, transferred 2,47,600 shares off-market by way of gift to his close relative (brother in law) Mr. Sanjay Gupta, who is the Managing Director of the Company. The details of the transactions are as given below.

Name of the entity	Anil Kumar Sharma
Date of transfer	20.04.2016
No of shares held – pre disposal	2,47,600
% of shareholding held - pre disposal	2.89
No of shares disposed off	2,47,600 (disposed to Sanjay Gupta through off market)
No of shares held - post disposal	NIL
% of shareholding held - post disposal	NIL
Mode	Inter-se transfer/gift
Date of disclosure to company	Not filed with company

14. In terms of Regulation 29(2) & 29(3) of SAST Regulations the Noticee was required to make requisite disclosure which I observe the Noticee has not made. Further in terms of Regulation 7(2)(a), the Noticee, being the promoter of the Company, was required to make disclosure to the Company within 2 days of the transaction which admittedly the Noticee did not make.

15. The Noticee has accepted in his submissions that he has not made the requisite disclosures under SEBI SAST Regulations and PIT Regulations regarding the aforesaid transfer of shares. The same was also confirmed by the Company vide its letter dated July 26, 2016. It is pertinent to note that non-compliance of the Regulations still continues as disclosures have still not been made. Noticee in his submissions inter alia stated that he did not have any malafide intention for not filing the disclosures or hiding any details.

16. As regards the Noticee's contention that his intention was not malafide, I note the observation made by SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI, decided on 30.09.2014, that *"… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.."*. In view of the same, I am not inclined to accept said contention of the Noticee.

17. Thus it is established that the Noticee has violated the provisions of Regulations 29(2) and 29(3) of the SEBI SAST Regulations, 2011 and provisions of Regulation 7(2)(a) of SEBI PIT Regulations.

18. In terms of Regulation 7(2)(b) of the SEBI PIT Regulations, the Company is required to notify the stock exchange regarding the transactions falling under Regulation 7(2)(a) of the PIT Regulations. As these provisions are not applicable to the Noticee, question of non-compliance of Regulation 7(2)(b) does not arise.

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 15A (b) of the SEBI Act?

19. The provisions of Section 15A(b) of the SEBI Act read as under:

<u>Penalties and Adjudication</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,—*

(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.

20. I further note that, the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} has held that:

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..............."

21. Hence, in view of the findings as given above, I am convinced that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act for violating the provisions of Regulations 29(2) ,29(3) of the SEBI SAST Regulations, 2011 and Regulation 7(2)(a) of SEBI PIT Regulations 2015.

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

22. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act, 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 investor/+s as a result of the default;

    (c) the repetitive nature of the default.

23. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act as stated above. The main objective of the Takeover Regulations and PIT Regulations is to afford fair treatment for shareholders who are affected by the change in shareholdings. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions. Thus, the cornerstone of the Takeover Regulations and PIT Regulations is investor protection. Further the disclosure as required under the SAST and PIT Regulations are of significant importance from the point of view of the Regulators also.

24. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. In this case, from the material available on record, 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 cannot be computed. It is observed from the records that the Noticee has not been penalized by SEBI in the past. Hence the default by the Noticee is not repetitive in nature.

ORDER

25. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of ₹ 4,00,000 (Rupees Four Lakhs Only) on the Noticee for violation of provisions of Regulations 29(2) and 29(3) of the SEBI SAST Regulations, 2011 and Regulation 7(2)(a) of SEBI PIT Regulations.

26. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

27. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of 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)	

28. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, 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 of Noticee.

29. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee i.e. Mr. Anil Kumar Sharma, and also to the Securities and Exchange Board of India.

Place: Mumbai **BARNALI MUKHERJEE**

Date: November 23, 2021 **ADJUDICATING OFFICER**