

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER: EAD-9/VKV/GSS/2020-21/9244-9245]**

**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:

Noticee No. 1: Dilip Sheth (PAN No.: AAJPS6896B)	Noticee No. 2: Alang Industrial Gases Ltd. (PAN: AAACA3238R) ISIN: INE848C01010
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In the matter of Alang Industrial Gases Ltd.

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), conducted investigation in the scrip of Alang Industrial Gases Limited (hereinafter referred to as "**Alang**" or "**the Target company**"), a company listed on BSE limited ("BSE") for the period July 09, 2012- May 23, 2014 ("**investigation period**"), wherein disclosure violations were observed by the entities namely; Dilip Sheth (hereinafter referred to as **Noticee no. 1 or by its individual name**) and Alang Industrial Gases Limited (hereinafter referred to as **Noticee no. 2 or "Alang" or "the Target company"**) jointly referred as Noticees, under Regulation 13(4) of SEBI (Prohibition of Insider Trading) Regulations 1992 (PIT Regulations) and Regulation 29(1) and 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations) against Noticee no. 1 and under Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations 1992 (PIT Regulations) against Noticee no. 2.
2. During the period of investigation, following was observed;
 - a. Shareholding of Mr. Dilip Seth had increased from 2,45,200 shares at the end of Quarter ending March 31, 2012 to 6,95,200 shares at the end of Quarter ending June 30, 2012. However, no disclosures in this regard were made by Mr. Dilip Seth, which was in violation of regulation 13 (4) of SEBI (PIT) Regulations 1992 and regulation 29 (1) and (2) of SEBI (SAST) Regulations, 2011.

- b. The Target company failed to file disclosure with respect to information received under regulation 13 (1) of SEBI (PIT) Regulations 1992 by Mr. Dilip Seth which was in violation of regulation 13 (6) of SEBI (PIT) Regulations 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. Subsequently, vide communication order dated July 17, 2020, the undersigned was appointed as Adjudicating Officer in the matter under Section 15 I (1) of Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) to inquire and adjudge the alleged violations and if satisfied that the Noticees are liable for imposition of penalty, may impose such penalty in terms of rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred as ‘**AO Rules**’) and under the provisions of section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Based on the findings of SEBI, a Show Cause Notice (SCN) dated August 07, 2020, was digitally issued to the Noticees on August 07, 2020, at the e-mail ID; dilips2004@yahoo.co.in to Noticee no. 1 and at nisargshah2015@gmail.com to Noticee no. 2, advising Noticees to file their reply within fourteen days of receipt of SCN. However, no reply was received by the Noticees till the issuance of Hearing Notice.
5. Subsequently, Hearing Notice (HN) dated August 21, 2020, was digitally issued to the Noticees on August 21, 2020 at the aforementioned email addresses, wherein the Noticees, in view of the ongoing COVID-19 situation, were advised to attend the virtual hearing through Webex on September 11, 2020. Subsequently, vide e-mail dated September 22, 2020 and September 10, 2020, Noticee no. 1 and vide e-mail dated August 29, 2020 and September 09, 2020, Noticee no.2, submitted their replies to the SCN.
6. The Noticees did not attend the hearing on September 11, 2020. However, in response to the HN dated August 21, 2020, the Noticee no. 1 submitted its reply vide email dated September 22, 2020, wherein the Noticee no. 1 reiterated its earlier submissions dated September 10, 2020. However, Noticee no. 2 did not attend the hearing scheduled on September 11, 2020.
7. Thereafter, in the interest of principles of natural justice, the Noticees were given another opportunity of virtual hearing through Webex on September 25, 2020. Neither Noticee no. 1 nor Noticee No.2 joined the Webex meet for the scheduled hearing. Thereafter, Noticee no. 1 was contacted at the mobile no. 9819832325 and Noticee no. 2 was contacted at the mobile no. 9879190003, which was available on record. On the phone Noticee no.1 requested to consider his earlier written submissions made vide emails dated September 22, 2020 and September 10, 2020 and Noticee no. 2 requested to consider their earlier written submissions made vide emails dated August 29, 2020 and September 09, 2020, under current proceedings. The same was also confirmed by the Noticees vide their emails dated September 25, 2020. Therefore, the current proceedings are proceeded further on the basis of written replies of the Noticees available on record.

8. Submissions of the Noticee no. 1 and Noticee no. 2 are summarized below;

➤ **Noticee no. 1**

- *Regarding violation of regulation 13(4) of PIT regulations, it is submitted that by reading PIT Regulations, I thought that I fall under regulation 13(1) and 13(3) SEBI (PIT) Regulations 1992 and had submitted due disclosures to the company in this regard under regulation 13(1) and 13(3) of SEBI (PIT) Regulations 1992.*
- *“I received 225000 equity shares as gift (interse transfer) from my sister-in-law Purvi Mehta on June 05, 2012 and disclosure under regulation 29(1) of SAST regulation 2011 was made to both Ahmedabad Stock Exchange and the Target Company on June 07, 2012 and sent through courier to Bombay stock Exchange on June 06, 2012.”*
- *“I received 225000 equity shares as gift (interse transfer) from my brother-in-law Girish Mehta on June 23, 2012 and disclosure under regulation 29(2) of SAST regulation 2011 was made to both Ahmedabad Stock Exchange and the Target Company on June 25, 2012 and sent through courier to Bombay stock Exchange on June 24, 2012.”*
- *I would like to submit that since registered office of the company Alang is situated in Ahmedabad and I was also in Ahmedabad in most of the time in the month of June 2012. So, I submitted disclosures to Ahmedabad Stock Exchange and the Target Company and sent through courier to Bombay stock Exchange.*
- *The same was done due to wrong interpretation of PIT regulations without any wrong or malafide intention. The same was also not done to defraud public at large or shareholders of the company.*
- *No investor has suffered any loss.*

➤ **Noticee no. 2**

- *We received disclosure under regulation 29(1) of SEBI (substantial Acquisitions of Shares and Takeovers) Regulations 2011 and regulation 13(1) of SEBI PIT regulations 1992 on June 07, 2012 from Dilip sheth for acquisition of 22500 equity shares through interse transfer and disclosure under regulation 29 (2) of SEBI SAST Regulations 2011 and regulation 13(3) of PIT regulations 1992 on 25th June 2012 from Dilip sheth for acquisition of another 25000 equity shares through inter se transfer.*
- *We had forwarded disclosures received under regulation 13(1) and 13(3) to Ahmedabad Stock Exchange in the time limit prescribed under PIT regulations 1992 to comply with the requirement of regulation 13(6) of PIT regulations 1992.*

- We submitted disclosure under regulation 13(6) to Ahmedabad Stock Exchange and sent through courier to Bombay stock Exchange.
- Since filing are more than eight years old, we did not find acknowledgments of disclosures submitted to Ahmedabad Stock Exchange. However, we assure that no such mistake shall occur in future.
- The company is incurring loss from past several years and imposition of even small amount of penalty will be very hard on us. Thus, lenient view may be taken.

ISSUES UNDER CONSIDERATION

9. I have carefully perused the charges levelled against the Noticees in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:
- I. Whether the Noticee no. 1 has violated 13(4) of PIT Regulations 1992 and Regulation 29(1) and 29(2) of SAST Regulations, 2011 and Noticee no. 2 has violated 13(6) of PIT Regulations?
 - II. Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15A(b) of SEBI Act?
 - III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?

FINDINGS

10. Before Proceeding further, the provisions as applicable, are reproduced as under:

SEBI (Prohibition of Insider Trading) Regulations 1992

13(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 shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

Disclosure by company to stock exchanges

13(6) Every listed company, within two working days] of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.

SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011

“29(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent 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.

(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.”

Issue no. 1: Whether the Noticee no. 1 has violated 13(4) of PIT Regulations 1992 and Regulation 29(1) and 29(2) of SAST Regulations, 2011 and Noticee no. 2 has violated 13(6) of PIT Regulations?

Violations committed by Noticee no. 1

11. During the period of investigation, it was observed that Shareholding pattern of the Target Company was as under:

Category	31-Mar-2012			30-Jun-2012			30-Sept-2012		
	No of share holders	Shares held	% of shares held	No of share holders	Shares held	% of shares held	No of share holders	Shares held	% of shares held
Promoter	4	1092200	20.22	4	1542200	28.56	4	1542200	28.56
Non-Promoter	304	4308270	79.78	324	3858270	71.44	324	3858270	71.44
Total	308	5400470	100	328	5400470	100	328	5400470	100

Category	31-Dec-2012			31-Mar-2013			30-Jun-2013		
	No of share holders	Shares held	% of shares held	No of share holders	Shares held	% of shares held	No of share holders	Shares held	% of shares held
Promoter	2	763900	14.15	2	763900	14.15	2	763900	14.15
Non-Promoter	349	4636570	84.73	368	4636570	85.85	398	4636570	85.85
Total	351	5400470	100	370	5400470	100	400	5400470	100

Category	30-Sept-2013	31-Dec-2013	31-Mar-2014

	No of share holders	Shares held	% of shares held	No of share holders	Shares held	% of shares held	No of share holders	Shares held	% of shares held
Promoter	2	763900	14.15	2	763900	14.15	4	1542200	28.56
Non-Promoter	398	4636570	85.85	444	4636570	85.85	464	3858270	71.44
Total	400	5400470	100	446	5400470	100	466	5400470	100

12. From the above, it is observed that there was no change in total number of shares in the company. However, the promoters' shareholding had increased from 10,92,200 shares (20.22%) as on March 31, 2012 to 15,42,200 shares (28.56%) as on Jun 30, 2012. Subsequently, promoter's shareholding decreased from 15,42,200 shares (28.56%) as on Sept 30, 2012 to 7,63,900 shares (14.15%) as on Dec 31, 2012. The changes in Promoters' shareholding of the Noticee, as observed from BSE website, are as under;

Name of the entity	30-Mar-2012		30-Jun-2012		30-Sept-2012		31-Dec-2012	
	Shares held	% of holding	% of holding	Shares held	Shares held	% of holding	Shares held	% of holding
Sheth Dilip	245200	4.54	695200	12.87	695200	12.87	695200	12.87

Name of the entity	30-Mar-2013		30-Jun-2013		30-Sept-2013		31-Dec-2013	
	Shares held	% of holding	% of holding	Share s held	Shares held	% of holding	Shares held	% of holding
Sheth Dilip	695200	12.87	695200	12.87	695200	12.87	695200	12.87

(Source: Exchange Website)

13. Therefore, from the above, it is clear that the shareholding of promoter director Dilip Seth i.e. Noticee no. 1 had increased from 2,45,200 shares (4.54 %) at the end of quarter ending March 2012 to 6,95,200 shares (12.87 %) at the end of quarter ending June 2012.

14. The shareholding details of Noticee no. 1 in this regard, as available on BSE website are mentioned in the table below;

30-Mar-2012		30-Jun-2012		Effect of acquisition
Shares held before the acquisition	% of holding before the acquisition	Shares held after the acquisition	% of holding after the acquisition	No. of shares Acquired
245200	4.54	695200	12.87	450000 (8.33%)

15. Thus, from the above and details available on BSE website, it is observed that Noticee no. 1, by virtue of the aforesaid acquisition between quarters ending March 2012 – June 2012, acquired 450000 (8.33%) equity shares

of the Target Company. Thus, with the aforesaid acquisition of shares by Noticee no.1, the shareholding of Noticee no. 1 increased from 4.54% to 12.87% in the Target Company as shown in the table above.

16. Thus, it is clear that as a result of aforesaid acquisition Noticee no.1 was obligated to make disclosure to the exchange, where shares of the company were listed i.e. BSE and the Target Company as stipulated under regulation 13(4) of PIT Regulations, 1992 and regulation 29(1) r/w regulation 29(2) of SAST Regulations 2011 within 2 working days of the acquisition of shares in the Target Company.

Violation of PIT regulations, 1992 by Noticee no. 1

17. It is observed that Noticee no.1, at the time of investigation, vide a letter dated February 06, 2020 and written submissions made under current proceedings dated September 10, 2020 and September 22, 2020 has submitted that *“regarding violation of regulation 13(4) of PIT regulations, it is submitted that by reading PIT Regulations, I thought that I fall under regulation 13(1) and 13(3) SEBI (PIT) Regulations 1992 and had submitted due disclosures to the company in this regard under regulation 13(1) and 13(3) of SEBI (PIT) Regulations 1992.”*

18. It is further observed that Noticee no.1 has provided the copy of disclosures dated June 06, 2012 and June 24, 2012 filed under regulation 13 (1) and regulation 13(3) of SEBI (PIT) Regulations 1992, respectively, duly acknowledged by the target company.

19. However, from the plain reading of regulation 13(4) of PIT regulations, it is clear that the regulation reads that 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, 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 and his dependents (as defined by the company) from the last disclosure and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

20. Thus, from the above, it is clear that Noticee no.1 being the promoter-director of the Target Company was obligated to make disclosure to the Target company and the stock exchange where the securities are listed i.e. BSE under regulation 13(4) of PIT regulations. The use of words “any person who is a director” in regulation 13(4) of PIT regulations are apparent and clear and leave no scope for any misunderstanding in interpretation of regulation 13(4) for Noticee no.1.

21. Hence, it is evident that any person who is the director of a company and if there has been a change in holdings of such person and his dependents from the last disclosure and is such change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower, shall be obligated to make disclosure under regulation 13(4) of PIT regulations.

22. Therefore, contention of Noticee no.1, *I thought that I fall under regulation 13(1) and 13(3) SEBI (PIT) Regulations 1992 and had submitted due disclosures to the company in this regard under regulation 13(1) and 13(3) of SEBI (PIT) Regulations 1992*, can not be accepted under current proceedings and thus, it is concluded that the Noticee no.1, by not making disclosure under regulation 13(4) of PIT regulations for the aforesaid acquisition has violated regulation 13(4) of PIT regulations.

Violation of SAST regulations, 2011 by Noticee no. 1

23. For violation under SAST regulation, it has been submitted by the Noticee no.1 that *"I received 225000 equity shares as gift (interse transfer) from my sister-in-law Purvi Mehta on June 05, 2012 and disclosure under regulation 29(1) of SAST regulation 2011 was made to both Ahmedabad Stock exchange and the Target Company on June 07, 2012 and sent through courier to Bombay stock Exchange on June 06, 2012."*

"I received 225000 equity shares as gift (interse transfer) from my brother-in-law Girish Mehta on June 23, 2012 and disclosure under regulation 29(2) of SAST regulation 2011 was made to both Ahmedabad Stock exchange and the Target Company on June 25, 2012 and sent through courier to Bombay stock Exchange on June 24, 2012."

24. With regard to aforesaid transaction, Noticee no.1 has also submitted copies of disclosures dated June 06, 2012 duly acknowledged by Ahmedabad Exchange and the Target Company under regulation 29(1) of SAST regulation 2011 and dated June 24, 2012 made to Ahmedabad Exchange and the Target Company under regulation 29(2) of SAST regulation 2011, duly acknowledged by Ahmedabad Exchange and the Target Company.

25. However, on perusal of BSE website, no such disclosure was found. Moreover, it has also been observed that Noticee no.1 has not submitted any evidence / proof of acknowledgement of making such disclosure to BSE. In this regard, reference may be drawn towards Kalindee Rail Nirman (Engineers) Limited vs SEBI decided on July 19, 2001, wherein Hon'ble SAT had held that :- *".... As observed by the Calcutta High Court, 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 documents 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. Admittedly, the appellant has not placed on record any acknowledgement received from BSE in regard to the mails that were allegedly sent containing the compliance reports. On the other hand, we have on record a letter from BSE specifically stating that it had not received the compliance reports for the aforesaid quarters from the appellant..."*

26. Thus, applying the ratio of Kalindee Rail Nirman to the present case, even if Noticee no. 1 has presented the courier receipts showing dispatch of disclosures to BSE in specified format u/r 29(1) r/w regulation 29(2) of SAST Regulations 2011, mere dispatch of the disclosure is not sufficient to show compliance of the disclosure obligations as mandated under SAST Regulations.
27. It is important that the disclosures should actually reach the stock exchange. The onus in this regard is on the sender to establish the compliance. In the instant case, BSE has specifically confirmed that it did not receive any disclosures from Noticee no.1. Thus, Noticee no. 1 has failed to establish that it had made disclosures in specified format u/r 29(1) r/w regulation 29(2) of SAST Regulations with regard to their aforesaid acquisition at the relevant time to the exchange.
28. In light of the above discussion, it is concluded that Noticee no.1 had made disclosure to the Target Company with respect to the aforesaid acquisition of 450000 shares in the Target Company. However, no such disclosure was made to the exchange, where securities of the Company were listed i.e. BSE. Thus, Noticee no.1 did not fully comply with the mandate of SEBI SAST regulations 2011 as stipulated under regulation 29(1) r/w regulation 29(2) of SAST Regulations 2011, which makes it mandatory to make disclosure to both the Target Company and the stock exchange where the securities are listed. Therefore, it is concluded that the above non-disclosure on part of Noticee no.1 resulted in violation of regulation 29(1) r/w regulation 29(2) of SAST Regulations 2011.
29. It is further noted that Noticee no. 1 in its written submissions under current proceedings has submitted that *“since registered office of the company Alang is situated in Ahmedabad and I was also in Ahmedabad in most of the time in the month of June 2012. So, I submitted disclosures to Ahmedabad Stock Exchange”*
30. In this regard, it is noted that mandate of regulation 13(4) of PIT regulations 1992 and 29(1) r/w regulation 29(2) of SAST regulations 2011, is specifically to make disclosure to the exchange where securities of the company are listed and not to any stock exchange regulated by SEBI. Thus, it is reasonably apparent that language and wordings of these regulations are ample clear without leaving an iota of doubt for the investors to understand the disclosure obligation. Thus, filing of disclosure to Ahmedabad Stock Exchange by Noticee no. 1 cannot be considered as compliance under regulation 13(4) of PIT regulations 1992 and 29(1) r/w regulation 29(2) of SAST regulations 2011. Therefore, by not making requisite disclosure to the exchange where securities of the company were listed i.e. BSE, Noticee no. 1 has violated regulation 13(4) of PIT regulations 1992 and 29(1) r/w regulation 29(2) of SAST regulations 2011 and contention of Noticee no. 1 can not be accepted under current proceedings.

Violations committed by Noticee no. 2

31. It was observed at the time of investigation that Noticee no.1 had submitted acknowledged copies of disclosures dated June 06, 2012 and June 24, 2012 filed under regulation 13(1) and 13(3) of SEBI (PIT) Regulations 1992, respectively and acknowledged copies of disclosures dated June 06, 2012 and June 24, 2012 filed under regulation 29(1) and 29(2) of SEBI (SAST) Regulations, 2011, with the Target Company. However, on examination of disclosures available on BSE website as well as reply received from the BSE, it was observed that the disclosures with respect to above stated transactions by Noticee no.1 were not made by the Target company i.e. Noticee no. 2 to the exchange, where securities of the company were listed i.e. BSE, which was in violation of regulation 13 (6) of SEBI (PIT) Regulations 1992.
32. In this regard, it is further observed that Noticee no. 1 has also provided the acknowledged copies of the disclosures made to the Target Company as mentioned under para 29 above, under current proceedings. However, on perusal of BSE website and reply received from BSE at the time of investigation, it is observed no disclosure in this regard was made by the target Company to the Exchange, where securities of the Company were listed.
33. It is observed that by virtue of regulation 13(6), a Target Company is obligated to file disclosures received under sub-regulations (1), (2), (3) and (4) of PIT regulations. 1992, to all the exchanges, where securities of the company are listed, within two working days of receipt of such disclosure. However, the target Company did not make the disclosure of the aforesaid acquisition by Noticee no.1, which was duly intimated to the Target Company by Noticee no. 1 under regulation 13(1) and 13(3) of PIT Regulations, 1992, till date. Thus, the non-compliance continues till the date of passing of this order.
34. It is further noted that as observed in preceding paragraphs that although nature of acquisition by Noticee no. 1 would fall within the ambit of regulation 13(4). However, regulation 13(6) of PIT regulations 1992 cast a duty on each Target company, whose securities are listed on any of the stock exchange, to inform such exchange any disclosure received by it under sub-regulation 1, 2, 3 and 4 of PIT regulations, which the Noticee no. 2 failed to do in current case. Therefore, it is clarified that findings of this order against Noticee no. 1 does not dilute or nullify the violation committed by Noticee no. 2 in the present case.
35. It is further observed that Noticee no. 2 under current proceedings has submitted that “*We had forwarded disclosures received under regulation 13(1) and 13(3) to Ahmedabad Stock Exchange*” In this regard, it is noted that as stated above, it is clarified that the statutory duty of Target company to file the disclosures under reference to BSE where the scrip of target company was listed could not be substituted by filing the same on Ahmedabad

Stock Exchange. Therefore, filing of disclosures by the Target Company to Ahmedabad exchange would not have served the intended mandate and purpose of disclosure obligations as stipulated under regulation 13(6) of PIT Regulations 1992 as the Noticee no. 2 was under obligation to file the disclosure to all the exchanges where securities of the company were listed and as per available records / evidence, Noticee no. 2 has failed to make the required disclosure at BSE.

36. It is further observed that Noticee no. 2 in its written submissions under current proceedings has also submitted that *"We submitted disclosure under regulation 13(6) to Ahmedabad Stock Exchange and sent through courier to Bombay stock Exchange."*
37. In this regard, it is noted that neither at the time of investigation nor under current proceedings, it is established that the Noticee no. 2 has submitted requisite proof / acknowledgement copies of sending disclosures to BSE under regulation 13(6) of PIT Regulation 1992. It is also a matter of record that BSE at the time of investigation has denied receipt of any disclosure from the target Company under regulation 13(6) of PIT Regulation 1992. Thus, applying ratio of Kalindee rail Nirman case (*supra*), the onus in this regard is on the sender to establish the compliance. In the instant case, BSE has specifically confirmed at the time of investigation that it did not receive any disclosures from the Noticee no. 2. Thus, the Noticee no. 2 has failed to establish that it had made disclosures in specified format u/r 13(6) of PIT regulation 1992 with regard to their aforesaid acquisition at the relevant time to the exchange.
38. On perusal of BSE website, it is observed that no disclosure with respect to aforesaid acquisition was made to BSE by Noticee no. 1 under regulation 13(4) of PIT Regulations 1992 and regulation 29(1) r/w regulation 29(2) of SAST Regulations 2011 and by Noticee no. 2 under regulation 13(6) of PIT Regulations 1992, within 2 working days of the acquisition of shares in the Target Company. However, from the shareholding pattern of the Noticee no.1, as available on BSE website, it is observed that shareholding of Noticee no. 1 for the relevant period was available on BSE website.
39. Thus, during the perusal of BSE website, it is observed that Alang i.e. Target company in its quarterly shareholding pattern filed with BSE for all the respective quarters in past had consistently disclosed the shareholding pattern of its promoters and Promoter Group. The details about shareholding of Noticee no. 1 till September 30, 2015, including the acquisition made between March 2012 – June 2012 which is the cause of action alleged in this case, were disclosed in the share holding pattern filed for the quarter ended June 2012. Hence, though Noticee no. 1 did not make disclosures in the format specified under PIT regulations 1992 and SAST Regulations 2011, within 2 working days of making relevant acquisition, the requisite details were available

in public domain during the relevant time and for all subsequent quarters till the date of initiation of instant proceedings. This observation acts as a mitigating factor for the case in hand.

Issue No. II: Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15A(b) of SEBI Act?

40. Referring to the judgment in the matter of SEBI vs. Shriram Ram Mutual Fund 2006 SCL 216(SC), wherein Hon'ble Supreme Court held that; *"In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not"*

41. In view of the foregoing, it is concluded that Noticee no. 1 has violated the provisions of regulation 13(4) of PIT Regulations, 1992 and regulation 29(1) r/w regulation 29(2) of SAST Regulations 2011 and Noticee no. 2 has violated the provisions of regulation 13(6) of PIT Regulations, 1992 . Therefore, it is a fit case to impose monetary penalty under the provisions of Section 15 A (b) of the SEBI Act, 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-;

(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.

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

42. In this regard, while determining the quantum of penalty, it is important to consider the factors 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 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.”

43. I also note that the lapse in question is first time of such default by the Noticees. There is no material available on record that the alleged failure to make disclosure by the Noticees in this case had any impact on price of the shares of the company or to indicate deliberate concealment of any material information by the Noticees. The non-compliance in this case was transitory and more than three years old. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee. Shareholding details of the Noticees were disseminated to public on BSE website within a reasonable timeframe. Aforesaid observations act as a mitigating factors in the current case.

44. However, it is also a matter of record that by virtue of aforementioned transaction, Noticees were required to make disclosures, within two days, under provisions of PIT and SAST Regulations 2011, to the company & stock exchange, which the Noticees did not make till the date of passing of order. Therefore, this non-compliance continues even as on date.

45. Thus, it is noted that disclosure requirements as per laws under reference serve a purpose and are not mere technical obligations. The purpose is to make investors aware of the changes in the substantial shareholding of persons within the specified time, enabling them to take informed investment decisions. Thus, the disclosures requirements prescribed in the provisions in question cannot be termed as non-consequential. Therefore, appropriate penalty need to be imposed on the Noticees for the alleged violations.

46. Here, it is pertinent to draw reference to *Yogi Sungwon (India) Ltd. v/s SEBI - Appeal No. 36 of 2000, Order dated May 04, 2001, wherein Hon'ble Securities Appellate Tribunal ("SAT") had observed that ".....On perusal of section 15I it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that 'he may impose such penalty' is of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. 'The Adjudicating Officer shall have due regard to the factors' stated in the section is a direction and not an option. It is not incumbent on the part of the Adjudicating Officer, even it is established that the person has failed to comply with the provisions of any of the sections specified in the sub-section (1) of section 15-I, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case....."*

In view of the above, I am of the opinion that the case in hand deserves an appropriate penalty as stipulated under section 15A(b) of the SEBI Act, 1992.

ORDER

47. After taking into consideration the facts and circumstances of the case and factors enumerated in section 15J of the SEBI Act and mitigating factors of the case, an appropriate penalty for the non-disclosure by the Noticees for violation of regulation 13(4) and 13(6) of PIT regulations 1992 and regulation 29(1) r/w regulation 29(2) of SAST Regulations 2011 (as enumerated in preceding paras above), in exercise of powers conferred under section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, is imposed on the Noticees, under Section 15 A (b) of the SEBI Act, 1992, for the alleged violations of non-disclosure. The Noticees will be jointly and severally liable to pay the penalty amount as mentioned in the table below;

Name of the Noticee	Penalty Amount (in Rs.)
Dilip Sheth (PAN No. AAJPS6896B)	2,00,000/- (Two Lakhs Only)
Alang Industrial Gases Ltd. (PAN No.:AAACA3238R)	

48. Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action – IV [EFD 1-DRA-4] SEBI Bhavan, Plot No.C4-A, ' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

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)	

49. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT
→ Orders → Orders of AO → Click on PAY NOW or at
<https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>

50. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

DATE: September 29, 2020

PLACE: MUMBAI

VIJAYANT KUMAR VERMA

ADJUDICATING OFFICER