

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/BM/JR/2024-25/ 30517 – 30519**

**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:

S. No.	Name	PAN
1.	Vikas Garg	AAAPG8241P
2.	Seema Garg	AAJPG3268R
3.	Sukriti Garg	ALWPG6403A

In the matter of Advik Capital Limited

Facts of the Case:

1. Securities and Exchange Board of India (hereinafter referred to as ‘**SEBI**’) had examined a Draft Letter of Offer (hereinafter referred to as “**DLOF**”) filed on June 01, 2022 in the matter of an Open Offer made by Mr Vikas Garg (hereinafter referred to as “**Noticee 1**”), Ms Seema Garg (hereinafter referred to as “**Noticee 2**”) and Ms Sukriti Garg (hereinafter referred to as “**Noticee 3**”) (collectively known as “**Acquirers**”/ “**Noticees**”) to the public shareholders of the Advik Capital Limited (“**Target Company**”). During the processing of DLOF, SEBI observed certain instances of non-compliance of regulation 29(1) and 29(2) read with 29(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**SAST Regulations**”) by the Noticees.

Appointment of Adjudicating Officer:

2. The undersigned has been appointed as the Adjudicating Officer (hereinafter referred to as “**AO**”) vide order dated April 15, 2024 under section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**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 sections 15A(b) of the SEBI Act the aforesaid alleged violations committed by the Noticees.

Show Cause Notice, Reply and Personal Hearing:

3. Show Cause Notice dated April 24, 2024 (hereinafter referred to as ‘**SCN**’) was issued in terms of Rule 4(1) of the Rules read with section 15-I of the SEBI Act to the Noticees alleging the following:

a) The details of transactions and status of compliance with Regulation 29(1) and 29(2) of SAST Regulations by the Noticees are as follows:

S. No	Name of entity responsible	Reg.	Date of trigger event	Shareholding (in %)			Due Date of disclosure	Date of disclosure	Delay (in days)
				Pre	Post	Change			
1	• Mr Vikas Garg (AAAPG8241P)	29(1)	11/10/2021	0.00	6.01	6.01	13/10/2021	04/06/2022	234
2		NA	14/10/2021*	6.01	4.81	(1.20)	NA	04/06/2022	NA
3	• Ms Seema Garg (AAJPG3268R)	29(1)	20/10/2021	4.81	5.06	0.25	22/10/2021	04/06/2022	225
4		29(2)	15/02/2022	5.06	3.03	(2.03)	17/02/2022	04/06/2022	107
5	• Ms Sukriti Garg (ALWPG6413A)	29(1)	19/04/2022	0.67	6.52	5.85	21/04/2022	04/06/2022	44

b) It was observed that the transactions mentioned at S.No 1, 3 and 5 of the aforesaid table crossed the benchmark of 5% shareholding under regulation 29(1) of SAST Regulations and triggered the obligation to make disclosure under regulation 29(1) within two working days from the date of acquisition. However, as detailed in the table, the disclosures were filed with significant delay. Hence it was alleged that the Noticees have made delayed compliance with regulation 29(1) read with 29(3) of SAST Regulations.

c) Further, as detailed in S.No 4 of the table above, Acquires and PAC sold 2.03 % shares of the Target Company on February 15, 2022 which resulted in change in shareholding from 5.06 % to 3.03 % and triggered the obligation to file disclosure under regulation 29(2) of SAST Regulations within 2 working days from the date of disposal of shares i.e. on February 17, 2022.

d) However, it is observed that the disclosure was filed on June 4, 2022 i.e with a delay of 107 days. Hence it is alleged that the Noticees made delayed compliance with regulation 29(2) read with regulation 29(3) of SAST Regulations.

4. The SCN was duly delivered to the Noticees. The Noticees vide letter dated May 29, 2024 replied to the SCN stating, inter alia, the following:

- *The Noticees made a Public Announcement pursuant to and in compliance with Regulation 3(1) and 4 of SAST Regulations, 2011 on May 18, 2022 to acquire 5,72,50,253 Equity Shares representing 26 % of paid - up equity share capital of Advik Capital Limited (hereinafter referred to as "ACL"). A copy of the Public announcement dated May 18, 2022 as available on SEBI website.*
- *Prior to that the Noticees entered into a Share Purchase Agreement (hereinafter referred to as "SPA") on May 18, 2022 with Shri Virender Kumar Agarwal & Shri Shakul Kumar Agarwal (collectively referred to as "Promoters/ Promoter group shareholders of ACL") to acquire 1,73,84,000 Equity Shares representing 7.89% of shareholding of ACL*
- *The SPA necessitated the Open Offer in terms of Regulation 3(1) and 4 of SAST Regulations. Pursuant to the open offer, the noticees acquired a total of 21.80% of the shareholding of ACL. The Noticees also filed the requisite report dated March 20, 2023 under SAST Regulations, 2011 with SEBI informing all the details of the said acquisition.*
- *Needless to say, the Public Announcement dated May 18, 2022, the Letter of Offer dated February 6, 2023 as well as the Post Offer Public Announcement dated March 20, 2023 filed pursuant to completion of offer is available on SEBI website, is in the public domain and there is no non-disclosure by us in this regard. We, therefore, submit that we have made all the necessary disclosures at each and every step and there is no non - disclosure by any of the Noticee either singly or jointly at any step.*
- *The Open Offer was made after carrying out all the necessary formalities under Regulation 3(1) and 4 of the SAST regulations, 2011 and nowhere the SAST Regulations, 2011 casts an obligation on the Acquirers to have filed the disclosures under regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations, 2011.*
- *However, pursuant to the said acquisition and after completion of the takeover offer we were advised by the professionals to file the disclosure under Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations 2011, hence we filed the same.*
- *In view of the above, it is submitted that the shares of ACL were acquired pursuant to the Open Offer after following all the necessary compliances and there was no stipulation to file any disclosures under Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations 2011. Hence, there was no mala fide intention behind delayed disclosure, therefore, the alleged violation of Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations 2011 and consequent issue of the SCN is void ab initio.*

5. In the interest of natural justice, an opportunity of personal hearing was given to the Noticees on June 18, 2024 vide notice dated June 5, 2024. The Authorised Representative of the Noticees appeared on the scheduled date and reiterated the submissions made vide letter dated May 29, 2024. He further agreed to the charges alleged in the SCN.

CONSIDERATION OF ISSUES AND FINDINGS

6. The issues that arise for consideration in the instant matter are:
 - (a) Whether the Noticees have violated provisions of regulations 29(1) and 29(2) read with 29(3) of SAST Regulations;
 - (b) Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) of SEBI Act?; and,
 - (c) 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?
7. The relevant provisions of regulations 29(1) and 29(2) read with 29(3) of SAST Regulations, allegedly violated by the Noticees is mentioned hereunder:

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.

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 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

ISSUE I. Whether the Noticees have violated the provisions of regulations 29(1) and 29(2) read with regulation 29(3) of SEBI SAST Regulations, 2011?

8. I have gone through the submissions made by the Noticee and the other material on record and I now proceed to deal with the same. The Noticees are immediate relatives and are also deemed to be persons acting in concert (PACs) in terms of regulation 2(1)(q) of SAST Regulations. I find that the Noticees have acquired and disposed of shares in the following manner:

S. No	Name of entity responsible	Reg.	Date of trigger event	Shareholding (in %)			Due Date of disclosure	Date of disclosure	Delay (in days)
				Pre	Post	Change			
1	• Mr Vikas Garg (AAAPG8241P)	29(1)	11/10/2021	0.00	6.01	6.01	13/10/2021	04/06/2022	234
2		NA	14/10/2021*	6.01	4.81	(1.20)	NA	04/06/2022	NA
3	• Ms Seema Garg (AAJPG3268R)	29(1)	20/10/2021	4.81	5.06	0.25	22/10/2021	04/06/2022	225
4		29(2)	15/02/2022	5.06	3.03	(2.03)	17/02/2022	04/06/2022	107
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9. From the above table it is noted that Noticee 1 (at sl. no. 1) On October 11, 2021, Noticee 2 (at sl. no. 3) on October 20, 2021 and Noticee 3 (at sl. no. 5) on April 19, 2022 have acquired shares of the Target company and crossed the benchmark of 5% shareholding which triggers the obligation of disclosure under regulation 29(1) of SAST Regulations to make the relevant disclosure within two working days of the said acquisition. However, it is observed that the disclosures were made after delay of 234 days, 225 days and 44 days respectively.

10. Further, as detailed in sl. no. 4 of table above, Noticee 2 sold 2.03 % shares of the Target Company on February 15, 2022 which resulted in change in shareholding from 5.06 % to 3.03 %. As already stated above, Noticee 2 along with Noticee 1 and Noticee 3 are PACs and this disposal of shares triggered the obligation on

them as PACs to file disclosure under regulation 29(2) of SAST Regulations within 2 working days from the date of disposal of shares i.e. on February 17, 2022. However, no disclosure was made for the said sale of shares within the stipulated timeline. It is observed from the documents available on record that disclosure as PACs under regulation 29(2) of SAST Regulations was made on June 4, 2022 with a delay of 107 days.

11. The Noticees submitted that they had made a Public Announcement in compliance with regulation 3(1) and 4 of SAST Regulations on May 18, 2022 to acquire 5,72,50,253 shares representing 26% of paid-up equity shares. The Open Offer was made after carrying out all the necessary formalities under regulation 3(1) and 4 of SAST Regulations and they were not under any obligation to make any disclosures under regulation 29(1) and 29(2) read with 29(3) of SAST Regulations.
12. It is noted that the acquisitions by the Noticees were done between October 11, 2021 to April 19, 2022 and the public announcement for the open offer was done only on May 18, 2022. Therefore, the submissions of the Noticee that they had made public all the relevant information about the shareholding does not hold good. Moreover, the charges levelled against them was also accepted during the personal hearing. Hence, the submissions made by the Noticees is devoid of any merit.
13. I am of the view that the disclosures requirements under the respective regulations serve very important purposes. The stock exchange is informed via disclosures so that the investing public will come to know of the position enabling them to continue on with or exit from the company. Further, timely disclosures of the details of the shareholding of the persons acquiring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Further, Hon'ble Securities Appellate Tribunal ('SAT') in the matter of Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014), has also 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."

14. Further, Hon'ble SAT in its judgement dated October 14, 2014 in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014), has held that "*..... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation.*"

15. I also note that in Appeal No. 66 of 2003 – Milan Mahendra Securities Pvt. Ltd. Vs. SEBI – the Hon'ble Securities Appellate Tribunal (SAT) has observed 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*".

16. In view of the above, I find that the Noticees have violated the provisions of regulations 29(1) and 29(2) read with regulation 29(3) of SEBI SAST Regulations.

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

17. The provisions of Section 15A(b) of the SEBI Act read 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 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.

18. I 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....."

19. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation.

20. Hence, in view of the findings as given above, I am convinced that the Noticees are liable for monetary penalty under section 15A(b) of the SEBI Act for violating the provisions of regulation 29(1) and 29(2) read with regulation 29(3) of SEBI SAST Regulations.

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

21. 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.

22. The main objective of disclosure related provisions in SAST 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 such provisions is investor protection. Further these timely disclosures are of significant importance from the point of view of the Regulators also.

23. 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 Noticees. 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 Noticees, nor has it been alleged by the SEBI. I further note that 2 adjudication orders have been passed against Noticee 1 and 1 adjudication order has been passed against Noticee 2 and 3 for similar violations.

ORDER

24. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees, the factors mentioned in section 15J of the SEBI Act and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the AO Rules, I hereby impose the following penalty:

Noticee	Violating Provision	Penal Provision	Penalty
Noticee 1	Regulation 29(1) read with regulation 29(3) of SAST Regulations	Section 15A(b) of SEBI Act	Rs.4,00,000/- (Rupees Four Lakh only)
Noticee 2	Regulation 29(1) read with regulation 29(3) of SAST Regulations	Section 15A(b) of SEBI Act	Rs.3,00,000/- (Rupees Three Lakh only)
Noticee 3	Regulation 29(1) read with regulation 29(3) of SAST Regulations	Section 15A(b) of SEBI Act	Rs.3,00,000/- (Rupees Three Lakh only)
Noticees	Regulation 29(2) read with regulation 29(3) of SAST Regulations	Section 15A(b) of SEBI Act	Rs.3,00,000/- (Rupees Three Lakh only) (jointly and severally on Noticees)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

25. The Noticees 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, Noticees may contact the support at portalhelp@sebi.gov.in.

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

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

Date: June 20, 2024

Place: Mumbai

**BARNALI MUKHERJEE
ADJUDICATING OFFICER**