BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/ 122 /2018]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 ("SEBI ACT") READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995)

In respect of **Ms. Krupa Sanjay Soni (PAN: BVSPS9740P) i**n the matter of **M/s. Parichay Investments Ltd**

Facts of the case:

1 Securities and Exchange Board of India ("SEBI") pursuant to examination of the scrip of M/s.Parichay Investments Ltd ("PIL") had observed that **Krupa Sanjay Soni** ("Krupa"), had violated provisions of Regulation 7(1) read with 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("SAST 1997") and Regulations 13(1), 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT 1992").

2 SEBI had conducted investigation in the scrip of PIL during July 21, 2010 to August 30, 2011 (hereinafter referred to as 'period of investigation' or 'investigation period'

3 During investigation the shareholding of Krupa was verified from the trade log and on verification, following disclosure related violations under SAST Regulations, 1997 and PIT Regulations 1992 were observed and hence alleged.

Date	**Triggered while holding%**	**Particulars**	**Violations – Non-disclosure under**
09-Sep-10	5.03	Crossing the threshold limit of 5%	7(1) of SAST 1997 and 13(1) of PIT 1992
17-Sep-10	5.51	Crossing the threshold limit of 5%	7(1) of SAST 1997 and 13(1) of PIT 1992
28-Sep-10	7.79	Change in shareholding by more than 2%	13(3) of PIT 1992
30-Sep-10	10.13	Crossing the threshold limit of 5%	13(3) of PIT 1992
05-Oct-10	7.56	Change in shareholding by more than 2%	13(3) of PIT 1992
29-Oct-10	9.88	Change in shareholding by more than 2%	13(3) of PIT 1992
22-Nov-10	7.36	Change in shareholding by more than 2%	13(3) of PIT 1992

Date	Triggered while holding%	Particulars	Violations – Non-disclosure under
31-Dec-10	4.78	Change in shareholding by more than 2%	13(3) of PIT 1992
03-Jan-11	5.21	Crossing the threshold limit of 5%	7(1) of SAST 1997 and 13(1) of PIT 1992
06-Jan-11	2.78	Change in shareholding by more than 2%	13(3) of PIT 1992

4 In this order wherever PIT Regulations, 1992 is mentioned it should be referred to as PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.

5 In this order wherever SAST Regulations, 1997 is mentioned it should be referred to as SAST Regulations, 1997 read with Regulation 35 of SEBI (Acquisition of Shares and Takeovers) Regulations, 2011.

Appointment of Adjudicating Officer

6 SEBI had initiated adjudication proceedings against Krupa and appointed Shri S V Krishna Mohan as Adjudicating Officer vide order dated June 2, 2016 under Section 15 I of the Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge Krupa under Section 15A (b) of the Act for the alleged violation of the provisions of law by Krupa. Pursuant to the transfer of the case, I have been appointed as Adjudicating Officer (AO), vide order dated August 14, 2017.

Show Cause Notice, Reply and Personal Hearing

7 Show Cause Notice ("SCN") dated August 24, 2017 was issued against Krupa under the provisions of Rule 4 (1) of the Rules to show cause as to why an inquiry should not be initiated against her and penalty should not be imposed under Sections 15A (b) of the Act for the alleged violations as stated above. Despite the SCN being served, no reply was received from Krupa with regard to above referred violations.

Hearing:

8 In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of Rules, Krupa was granted an opportunity of personal hearing before the undersigned on

October 13, 2017. In response, Krupa confirmed appearance vide letter dated September 27, 2017. However, she had not appeared before me on the scheduled hearing date.

9 Another opportunity of personal hearing was granted on November 6 and 7, 2017 to Krupa. On the day of hearing Authorised Representative ("AR") appeared before me on the basis of authorization of Krupa and submitted the written submissions on the even date and also reiterated the same during hearing and undertook to make further submissions before November 24, 2017.

10 The submission made by AR vide letter dated November 6, 2017, inter-alia states that she require more time to arrange contract notes and submit the built-up of shareholding to answer the charge of violation of Trigger defaults as alleged in the SCN.

11 However, till the date of passing this Order Krupa/AR had not made any additional submissions and accordingly, I conclude the submissions made vide letter November 6, 2017 as her final submission and proceed further.

Consideration of Issues, Evidence and Findings:

12 I have carefully perused the charges levelled against Krupa in the SCN and all the documents available on record. In the instant matter, the following issues arise for consideration and determination in respect of:

I. Whether Krupa has violated Regulations 7(1) read with 7(2) of SAST Regulations and 13(1) and 13(3) read with 13(5) of PIT regulations?

II. Does the violation, if any, on the part of Krupa attract monetary penalty under Section 15A (b) of the Act?

III. If so, what would be the quantum of monetary penalty that can be imposed on Krupa taking into consideration the factors mentioned in Section 15J of the Act?

13 Before proceeding further, I would like to refer to the relevant provisions of PIT Regulations 1992, PIT Regulations 2015, SAST Regulations 1997 and SAST Regulations 2011 which read as under:

Relevant provisions of SAST Regulations, 1997:

7(1) *Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

7(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

(a) the receipt of intimation of allotment of shares; or
(b) the acquisition of shares or voting rights, as the case may be.

Relevant provisions of SAST Regulations, 2011:

Repeal and Savings.

35.(1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force. (2) Notwithstanding such repeal,— (a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations; (b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed; (c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations. Page 69 of 71 (3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Relevant provisions of PIT Regulations,1992:

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :— (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights, as the case may be.

Continual disclosure.

13 (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, 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 2% of total shareholding or voting rights in the company.

13(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

PIT Regulations, 2015

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 arehiseby repealed.
(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed;

and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations

Findings:

14 I have carefully perused the allegations levelled in the SCN and the replies submitted by Krupa. Further in the absence of any defense from Krupa, I had to take into consideration the evidence placed before me. In this regard, I would like to refer to Hon'ble SAT observation *in the matter of Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 wherein SAT has observed that "……..., appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices*". Accordingly, I conclude that Krupa by neither filing any reasoned reply to show cause notice issued to her nor availing the opportunity of personal hearing in the adjudication proceedings, is presumed to have admitted the charges leveled against her the show cause notice. Hence it is concluded that Krupa is guilty of violating aforesaid Regulations.

15 I would like to rely on Hon'ble SAT ruling in **Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI** , wherein the Hon'ble 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."* Since the disclosures were not made on numerous occasions, I find Krupa has contravened the provisions of Law and liable for penalty.

Does the violation, if any, on the part of Krupa attract monetary penalty under Section 15 A(b) of the Act?

16 Having stated above that Krupa has violated the provisions of SEBI Act, she is liable for monetary penalty under Section 15A(b) of the Act in terms of the penal provisions as stated below:

SEBI Act

Section 15A(b) of the Act (as existed during the period of violation) reads as under:

Penalty for fraudulent and unfair trade practices.

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 there for 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 III : If so, what would be the quantum of monetary penalty that can be imposed on Krupa after taking into consideration the factors mentioned in Section 15J of the Act?

17 While determining the quantum of penalty under Section 15A(b) it is important to consider the factors stipulated in Section 15J of SEBI Act, which read 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.*

18 It is observed from the records that any gain or unfair advantage accrued to Krupa as a result of non-disclosure has not been quantified. Further, there is no material is made available on record to assess the disproportionate gain or unfair advantage, amount of loss caused to an investor or group of investors as a result of non-disclosure. However I note that Krupa was repetitive offender from the following:

- Krupa was found guilty and prohibited from buying, selling or dealing in the securities market, in any manner whatsoever for 5 years by Whole Time Member (WTM) of SEBI vide order dated September 5, 2017 in the matter of Rottam Commercials Ltd for violating Sections 12A (a), (b), (c) of the Act read with Regulations 3(a),(b(,(c),(d), 4 (1) and 4(2)(a),(d) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("FUTP Regulations").
- Krupa was also penalized a sum of Rs.30,00,000/- by SEBI Adjudicating officer vide order dated September 14,2012 in the matter of Shree Global Traedefin Ltd for violating Regulations 3(a),(b(,(c),(d), 4 (1) and 4(2)(a),(g) of FUTP Regulations.
- Krupa was also penalized a sum of Rs.10,00,000/- by SEBI Adjudicating Officer vide order dated July 27, 2018 for not making similar disclosure violations about her holding in the scrip of Saiananad Commercial Limited (erstwhile Oregon Commercial Limited)

19 Hence, as observed by Hon'ble SAT on the importance of making disclosures, I am fixing Krupa liable for not making disclosures under PIT, 1992 and SAST, 1997.

20 The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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 However, while determining the penalty to be levied , I have considered violations by Krupa under 7(1) of SAST Regulations and 13(1) PIT Regulations as a single violation since they are one and the same and would like to refer to the judgement of Hon'ble SAT in Vitro Commodities v/s SEBI wherein it has stated "*It may be noted that provisions of Regulations 7(1) of takeover Regulations 1997 and Regulation 13(1) of PIT 1992 are not substantially different, since violation of first automatically triggers the violations of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulation 1997 and Regulation 13(1) of PIT 1992 are not stand alone regulations and one is corollary of other.*

ORDER

22 In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of Rs.6,00,000 (Rupees Six lakhs only) on Krupa which I feel is commensurate with the alleged violations.

23 Krupa shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment facility into Bank account the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI - Penalties Remittable to Government of India
Beneficiary A/c No	31465271959

24 Krupa shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manger (Enforcement Department - DRA- I) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at 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)	

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

Date: September 28, 2018 **SAHIL MALIK**

Place: Mumbai **ADJUDICATING OFFICER**