

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. Order/SM/KL/2020-21/10042-10044]

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 Neelam Kumar Oswal
(PAN – AAFPO1272P)

Mr Akhil Oswal
(PAN - AAEP01804C)

Ms. Sudha Oswal
(PAN - AAFPO1274M)

In the matter of
Punjab Woolcombers Limited.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an examination in the scrip of Punjab Woolcombers Limited (hereinafter referred to as '**Company**'/'**PWL**'), a company listed on the Bombay Stock Exchange ('**BSE**') , during the period October 1, 2016 to December 31, 2016 (hereinafter referred to as the '**examination period**') for the probable violation of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') by Mr Neelam Kumar Oswal (hereinafter referred to as '**Noticee no. 1**'), Mr Akhil Oswal (hereinafter referred to as '**Noticee no. 2**') and Ms Sudha Oswal (hereinafter referred to as '**Noticee no. 3**'). It is also observed that Noticee nos. 1 to 3 (hereinafter also collectively referred to as '**Noticees**') are the promoters of the company.
2. Based on the findings of the examination, adjudication proceedings were initiated

against the Noticees under the provisions of section 15 A (b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') for their alleged failure to make the necessary disclosures mandated under the provisions of SAST Regulations. It is alleged that Noticee nos 1 and 2 allegedly failed to make the necessary disclosures which were required to be made by them under Regulation 29(2) r/w Regulation 29(3) of the SAST Regulations and Noticee no. 3 failed to make the disclosure under Regulation 29(1) r/w Regulation 29 (3) of the SAST Regulations in respect of her acquisition of shares of the company during the examination period.

APPOINTMENT OF ADJUDICATING OFFICER

3. Dr. Anitha Anoop was appointed as the Adjudicating Officer vide order dated February 06, 2020 under section 19 of the SEBI Act read with section 15-I of the SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under section 15 A (b) of the SEBI Act, the aforementioned alleged violation of the provisions of law by the Noticees. Pursuant to the transfer of Dr Anitha Anoop to another department, the undersigned has been appointed as the adjudicating officer in the present matter vide communique dated November 03, 2020.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice ('**SCN**') ref. SEBI/EAD/AA/KL/10904/2020 dated June 10, 2020 was issued to the Noticees in terms of Rule 4 (1) of the Adjudication rules read with section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against the Noticees and why penalty should not be imposed under the provisions of section 15A(b) of the SEBI Act for the violations alleged to have been committed by the Noticees. The SCN *inter alia* alleged the following :-
 - a) *Upon perusal of the shareholding pattern for the quarters ending September 2016 and December 2016, it was observed that Noticee 2 having 65,39,526 (20.11%) equity shares, transferred 6.27% of the equity capital to Noticee 3 and 13.84% equity capital to Noticee 1*

thereby reducing his shareholding from 20.11% to Nil and increasing the shareholding of Noticee 1 from 11.60% to 25.44% and increasing the shareholding of Noticee 3 from Nil to 6.27%. Upon perusal of the transaction statements, it was observed that Noticee 2 having 65,39,526 (20.11%) equity shares as on October 01, 2016, transferred 45,00,000 (13.84%) equity shares to Noticee 1 on October 20, 2016 and 10,39,526 equity shares to Noticee 3 on October 26, 2016.

b) In this regard, it is alleged that Noticee 1 failed to file disclosures with Exchanges in terms of Regulation 29(2) of SAST Regulations. Further, it is also alleged that Noticee 2 and Noticee 3 also failed to file disclosures in this regard and violated the provisions of Regulations 29(2) and 29(1) of the SAST Regulations, respectively.

5. The SCN was duly served on the Noticees. In response to the SCN, the Noticees requested for inspection of the documents pertaining to the proceedings. The same was provided to the Noticees on July 10, 2020 by SEBI. It is noted that Noticees failed to avail the same on the stipulated date. Further, in view of the prevailing circumstances due to Covid-19 pandemic, vide email dated September 07, 2020, Noticees were provided with another opportunity of inspection of documents i.e online inspection of documents through webex platform. As the Noticees failed to respond to the same, reminders were also sent to the Noticees on September 29, 2020 and October 07, 2020. However, the Noticees neither responded to the letters of SEBI nor availed the opportunities of inspection of documents provided to them. Subsequently, vide email dated November 05, 2020, the Noticees were informed about the change in Adjudicating Officer in the context of the present matter and were also advised to make their submissions to the SCN by November 23, 2020. The Noticees submitted their reply to the SCN vide letters dated November 19, 2020 and December 02, 2020 and inter alia made the following major submissions:-

Reply letter dated November 19, 2020

- i. These shares have been transferred from Mr. Neelam Kumar Oswal to Mrs. Sudha Oswal and Mr. Akhil Oswal but later on shares of Akhil Oswal have been reverted back to Neelam Kumar Oswal. The transfer of these shares has not effected any shareholder or any person in any manner since these shares are not being quoted on the Bombay Stock Exchange where these shares are listed.*

- ii. *After 11.07.2016 there was no trading at Bombay Stock Exchange and the data is not available. The intra-family transfer has not affected any person since there was no sale and purchase on Bombay Stock Exchange. These shares have been transferred on 19 & 20.10.2016 and retransferred from Mr. Akhil Oswal to Neelam Kumar Oswal.*

Reply email dated December 02, 2020

- i. *This is in continuation to our letter dated 19.11.2020 sent by email to you regarding the reply to show cause notice dated 10.06.2020. Mr. Neelam Kumar Oswal is the main promoter of the company who was suffering from cancer for the past few years. Later on he was operated for throat cancer in Max Hospital, New Delhi. We are attaching herewith the detailed report of treatment of Mr. Neelam Kumar Oswal.*

6. In the interest of natural justice, the Noticees were provided with an opportunity of personal hearing on the scheduled date of hearing i.e. on December 02, 2020 which was conducted through an online webex platform. Mr. Ashok Singla, Authorised Representative (AR) appeared and tendered the reply on behalf of the Noticees. The AR reiterated the submissions made by the Noticees in their replies dated November 19, 2020 and December 02, 2020 and further stated that the disclosures mandated under the SAST Regulations could not be made by the Noticees owing to the ill health of Noticee no. 1 (Mr. Neelam Kumar Oswal).

CONSIDERATION OF ISSUES AND FINDINGS

7. I have considered the allegation levelled against the Noticees in the SCN, the aforementioned submission of the Noticees and also the relevant material on record. The issues that arise for consideration in the present case are:
 - I. Whether the Noticees have violated the provisions of Regulations 29(1), 29(2) r/w Regulation 29(3) of the SAST Regulations?
 - II. Whether the violations committed by the Noticees attract monetary penalty under section 15A(b) of the SEBI Act?
 - III. If yes, what should be the quantum of penalty?

8. In this regard, the relevant provisions of the SAST Regulations allegedly violated by the Noticees are reproduced below:-

SAST Regulations, 2011

Disclosure of acquisition and disposal

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, 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.

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 of shares or voting rights in the target company to,

- a. every stock exchange where the shares of the target company are listed; and the target company at its registered office*

ISSUE I :- Whether the Noticees violated the provisions of Regulations 29(1), 29(2) r/w 29(3) of the SAST Regulations, 2011?

ISSUE II: - Whether the violations committed by the Noticees attract monetary penalty under section 15A(b) of the SEBI Act?

9. I note from the shareholding pattern filings made by the company to BSE for the quarters ended September 2016 and December 2016 that the total paid up share capital of the company was Rs 32.49 crores which is represented by 3,24,99,144 shares. In terms of Regulation 29 (1) of the SAST Regulations, if an acquirer acquires more than 5% of the shares or voting rights in a target company, the acquirer is obligated to make necessary disclosures to the company and to the stock exchanges as per the prescribed reporting format mentioned in the regulations within two working days of such acquisition of shares or voting rights. Further, in terms of Regulation 29(2) r/w Reg. 29(3) of the SAST Regulations, 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 and such change exceeds two per cent of the total shareholding or voting rights in the target company. The disclosure made in the context of the above said regulations shall be made to the stock exchanges and to the company as per the prescribed format within two working days of such acquisition or disposal of shares which has resulted in the change in shareholding or voting rights in the target company, as mentioned in para 8 above.

10. From the examination report made available, I observe that the Noticees who were the promoters of the company had executed certain off market transactions in the scrip of the company during the month of October 2016. As per the examination report, it is noted that as on October 01, 2016, Noticee no. 2 was holding 65,39,526 shares of the company which represented 20.11% of the total share capital of the company. I find that Noticee no. 2 through off market transactions transferred 45,00,000 shares to Noticee no. 1 on October 20, 2016 and further transferred 20,39,526 shares to Noticee no. 3 on October 26, 2016. The above mentioned off market transactions resulted in change in the shareholding of Noticee no. 2 from his existing position of 20.11% as on October 01, 2016 to Nil as on October 26, 2016. Further, these transactions also resulted in change in the shareholding of Noticee no 1 wherein his shareholding in the company increased from his existing position of 11.60% to 25.44 % pursuant to his acquisition of 45,00,000 shares from Noticee no. 2 on October 20, 2016. It is also noted that the shareholding of Noticee no.3 who was not holding any shares of the company as on October 1, 2016 increased to 6.27% as on October 26, 2016 as a result of Noticee no. 3 receiving 20,39,526 shares from Noticee no 2. The change in the shareholding of the Noticees is explained in the Table below:-

TABLE

SI No.	Noticee details	Shareholding position as on October 01, 2016 along with % of shareholding in the company	Shareholding position as on October 20, 2016 and October 26, 2016 along with % of shareholding
1	Mr Neelam Kumar Oswal (Noticee no.1)	37,71,067 shares representing 11.60% of the total share capital	82,71,067 shares representing 25.44% of the total share capital
2	Mr Akhil Oswal (Noticee no.2)	65,39,526 shares representing 20.11% of the total share capital	NIL
3	Ms. Sudha Oswal (Noticee no.3)	NIL	20,39,526 shares representing 6.27% of the total share capital of the company

11. In their reply to the SCN and also in their submissions made during the course of the proceedings, the Noticees have not disputed the above transactions. The said acquisition /disposal of shares beyond the threshold limit which resulted in change in the shareholding of the Noticees also triggered the obligation on their part to make the necessary disclosures u/r 29(1) and 29(2) of SAST Regulations to the company and to BSE within two working days from the date of acquisition/disposal of shares as stipulated u/r 29(3) of the SAST Regulations. In their replies to the SCN and also during the course of the proceedings, the Noticees have admitted to the fact that no such disclosures were made by them under Regulations 29(1) and 29(2) of SAST Regulations. Further, BSE in its communication with SEBI has also confirmed that the Noticees have not made the necessary disclosures under Regulations 29 (1) and 29(2) of SAST Regulations. In view of the above, I hold that Noticee nos. 1 and 2 have failed to comply with the provisions of Regulation 29(2) r/w Regulation 29(3) of SAST Regulations and Noticee no. 3 has failed to comply with the provisions of Reg. 29(1) r/w Reg. 29(3) of the SAST Regulations.

12. The Noticees have contended that the off market transfers have taken place among the family members who were also the promoters of the company and that the transactions have not harmed the interest of any shareholder of the company as they were not executed on the stock exchange platform. The Noticees further contended that the financial position of the company was weak and the share price of the company was Rs 1.55 as on July 11, 2016. The Noticees also mentioned that there was no trading in the shares of the company at BSE after July 2016. Finally, during the course of the proceedings, the Noticees admitted that the mandated disclosures under the SAST Regulations could not be made by them owing to a serious health issue faced by Noticee No 1.
13. In this context, it is pertinent to mention that the disclosure requirements under respective regulations serve very important purposes. The stock exchange is informed so that the investing public will come to know of the position enabling them to take a view to stick on with or exit from the company. Timely disclosure of the details of the shareholding of the persons acquiring/transferring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Hon'ble SAT in the matter of Coimbatore Flavors & Fragrances Ltd vs SEBI (Appeal no. 209 of 2014 and Order dated August 11, 2014), has held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip and secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same"* Further, in the matter of Appeal No 66 of 2003 – Milan Mahendra Securities Pvt Ltd vs SEBI – the Hon'ble SAT, vide its order dated April 15, 2005 also held that , *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to monitor the transactions in the market"*

14. In this context, I also note that Hon'ble SAT in the matter of Mrs. Komal Nahata Vs. SEBI (Appeal No. 5 of 2014 decided on January 27, 2014) has observed that:

“Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure.”

15. Therefore, in the facts and circumstances of the case, the failure on the part of the Noticees to make the disclosures under the SAST Regulations as found in this case would defeat the purpose of the provisions of Regulations 29(1), 29(2) r/w 29(3) of the SAST Regulations. The statutory requirement of making the disclosures prescribed in the regulations and adherence to the timeline stipulated in the Regulations is mandatory. Considering these facts and circumstances, I hold that Noticee nos 1 and 2 have violated the provisions of Regulation 29(2) r/w Regulation 29(3) of the SAST Regulations and Noticee no. 3 has violated the provisions of Regulation 29 (1) r/w Regulation 29(3) of SAST Regulations. In view of the above reasons, I hold that this case deserves imposition of monetary penalty upon the Noticees under section 15A(b) of the SEBI Act which reads as following:-

SEBI Act

Penalty for failure to furnish information, return, etc.-

15A. If any person, who is required under this Act or any rules or regulations made thereunder,--

(a).....

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

ISSUE III:- If yes, what should be the quantum of penalty?

16. For the purpose of adjudication of penalty, it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The guidelines in this regard are provided by the legislature in section 15J of the SEBI Act. As per the explanation appended to section 15J, vide Part VIII of Chapter VI of the Finance Act, 2017, which was brought after the Judgment of Hon'ble Supreme Court in the case of Roofit Industries, while adjudging the quantum of penalty, the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J of the SEBI Act, which reads as under:-

15J. 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.”

17. Having regard to the factors listed in section 15J, it is noted that from the material made available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. The record do not show any repetitive default of this nature by the Noticees. The records have also not brought out instances of investor complaints received as a result of the default committed by the Noticees. At the same time, I also cannot lose sight of the fact that Noticees have not made the relevant disclosures till date. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with

rule 5 of the Adjudication Rules, I, hereby impose monetary penalty of Rs 2,00,000/- (Rupees Two Lakh only) on the Noticees viz. Mr Neelam Kumar Oswal, Mr Akhil Oswal and Ms Sudha Oswal under section 15A(b) of the SEBI Act for their violations mentioned in the Table below. In my view, the said penalty is commensurate with the violations committed by the Noticees in this case.

Sl no.	Name of Entity	Violations	Penal Provisions	Penalty (jointly and severally)
1	Mr Neelam Kumar Oswal /Noticee no. 1	Regulation 29 (2) r/w Reg. 29 (3) of SAST Regulations.	Section 15 A(b) of the SEBI Act.	Rs. 2,00,000/- (Rupees Two Lakh only)
2	Mr. Akhil Oswal/Noticee No. 2	Regulation 29 (2) r/w Reg. 29 (3) of SAST Regulations.		
3	Ms. Sudha Oswal/Noticee no. 3	Regulation 29 (1) r/w Reg. 29 (3) of SAST Regulations.		

18. The Noticees shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in.

19. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-III, 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)	

20. 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.
21. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz Mr Neelam Kumar Oswal, Mr Akhil Oswal and Ms Sudha Oswal and also to the Securities and Exchange Board of India.



Date: December 30, 2020

Suresh B Menon

Place: Mumbai

ADJUDICATING OFFICER