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BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: Order/AP/AS/2020-21/10030]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Dr. Ramesh Mahadevan Subramaniam,
(PAN: AAVPS2246K)

A-103, Sagar Garden, LBS Marg,
Opp. Nirmal Life Style Mall,
Mulund West,
Mumbai – 400 080 (Maharashtra).

In the matter of Prism Medico and Pharmacy Limited

1. M/s Prism Medico and Pharmacy Ltd. (hereinafter referred to as “the Company”) is a company having its shares listed on the Bombay Stock Exchange Limited (hereinafter referred to as “BSE”). Securities and Exchange Board of India (“SEBI”) had undertaken an examination in the dealing of securities of the Company.
2. During examination, SEBI observed that Dr. Ramesh Mahadevan Subramaniam (hereinafter referred as ‘Noticee’), had acquired/ sold shares of the Company. From the contract notes and National Securities Depository Limited (“NSDL”) transaction statements of the Noticee, SEBI observed as follows:
 - a. The Noticee had done off-market and on-market buy and sell transactions in the shares of the Company during March 28, 2014 to August 04, 2018.
 - b. The Noticee’s certain transactions in the shares of the Company attracted his consequent disclosure obligations under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘PIT Regulations’) and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as ‘SAST Regulations’). The details of his transactions and applicable disclosure obligations are shown in the following table:

Date of transaction	Transaction Type	Buy/ Sell	Quantity of Shares	Holding after transaction	Disclosure required under PIT Regulations	Disclosure required under SAST Regulations
28/03/2014	Off-market	Buy	2,00,000 (10.04%)	2,00,000 (10.04%)	13 (1)	29 (1)

04/04/2014	On Market	Sell	24,250 (8.82%)	1,75,750 (8.82%)	-	-
17/04/2014	On Market	Sell	3,619 (0.18%)	1,72,131 (8.64%)	-	-
08/05/2014	On Market	Sell	18,300 (0.92%)	1,53,831 (7.72%)	13 (3)	29 (2)
13/05/2014	On Market	Sell	15,250 (0.76%)	1,38,581 (6.96%)	-	-
21/07/2014	Off-market	Sell	95,000 (4.78%)	43,581 (2.18%)	13 (3)	29 (2)
04/08/2014	Off-market	Sell	43,581 (2.18%)	0 (0.00%)	-	-

- c. The Noticee had made following disclosures to the Company and BSE under the PIT Regulations and the SAST Regulations with respect to his aforementioned buy/ sell transactions:

Date of transaction	Under the SAST Regulations		Under the PIT Regulations
	Date on which disclosure made to the Company	Date on which disclosure made to the Exchange	Date on which disclosure made to the Company
28/03/2014	31/03/2014	02/04/2014	31/03/2014
08/05/2014	09/06/2014	10/06/2014	09/06/2014
21/07/2014	23/07/2014	24/07/2014	23/07/2014

- d. In respect of acquisition of 2 lakh shares (10.04% of the shareholding of the Company) of the Company on March 28, 2014, the Noticee was under the obligation to make disclosures to the Company under Regulation 13(1) read with 13(5) of the PIT Regulations and to the Company and BSE under Regulation 29(1) read with 29(3) of the SAST Regulations within two working days of the acquisitions of shares of the Company.

- e. On May 08, 2014, when the Noticee sold 18,300 shares of the Company, his shareholding in the Company reduced from 10.04% (as on March 28, 2014) to 7.72% (as on May 08, 2014) i.e. more than 2%. Similarly, on July 21, 2014, when he sold 95,000 shares of the Company, his shareholding in the Company reduced from 7.72% (as on May 08, 2014) to 2.18% (as on July 21, 2014). These transactions resulted in change of his total shareholding in the Company in excess of 2%, triggered his obligations under Regulation 13(3) read with 13(5) of the PIT Regulations and under Regulation 29(2) read with 29(3) of the SAST Regulations to make disclosures to the Company and BSE within two working days of such sale of shares of the Company.

3. In view of the above, it was alleged that the Noticee had made delayed disclosures to the Company under Regulations 13(1) and 13(3) read with 13(5) of the PIT Regulations and to the Company and BSE

under Regulations 29(1) and 29(2) read with 29(3) of the SAST Regulations for transactions dated March 28, 2014, May 08, 2014 and July 21, 2014.

4. The competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate upon the alleged violations of the provisions of the PIT Regulations and the SAST Regulations by the Noticee as described hereinabove. Accordingly, *via* communique dated February 23, 2019, Shri Santosh Shukla, Chief General Manager had been appointed as Adjudicating Officer ('erstwhile AO') in the matter and had been advised to inquire and adjudge under Rule 5 of the SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred as 'Adjudication Rules') and under section 15A(b) of the SEBI Act, of the alleged violation of the aforesaid provisions by the Noticee.
5. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act, the notice to show cause no. EAD/SS/AKS/6060/1-5/2019 dated March 07, 2019 (hereinafter referred as 'SCN') was issued to the Noticee by the erstwhile AO, calling upon it to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A(b) of the SEBI Act for the aforesaid alleged violations of the provisions of the PIT Regulations and the SAST Regulations. The relevant provisions of the PIT Regulations and the SAST Regulations charged in this case are reproduced hereinafter:

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

(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.*

(5) *The disclosure mentioned in sub-regulations (3), (4) and (4A) 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.*

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.

(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 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.*

6. The SCN was duly served upon the Noticee *via* Speed Post Acknowledgement Due on March 15, 2019. Vide letter dated March 19, 2019, the Noticee submitted that he wishes to file the Settlement Application with SEBI and requested for granting personal hearing in the matter. Accordingly, in terms of Rule 4(3) of the Adjudication Rules, the erstwhile AO granted an opportunity of personal hearing to the Noticee on April 16, 2019 and allowed the Noticee to submit his reply to the SCN on or before the date of scheduled hearing. On schedule date of hearing, authorized representative of the Noticee *viz.*, Ms. Kumudini Bhalerao, Practicing Company Secretary and Ms. Deepti Sudhir Joshi, Practicing Company Secretary appeared on behalf of him and submitted that the Noticee is in process of filing Settlement Application with SEBI in the concerned matter and sought liberty to make submission on merit later.
7. Vide e-mail dated April 23, 2019, the Noticee informed that he has filed a Settlement Application with SEBI on April 22, 2019. Further, on June 25, 2019, Settlement Division of SEBI requested erstwhile AO to keep the instant proceedings in abeyance till the disposal of Settlement Application.

8. Subsequently, by a common *communication-order* dated January 07, 2020, this case was transferred to the undersigned with the advice that except for the change of the Adjudicating Officer, the other terms and conditions of the original orders '*shall remain unchanged and shall be in full force and effect*' and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*".
9. On November 04, 2020, Settlement Division of SEBI informed that the Settlement Application (S.A. No. 3945/2019) of the Noticee has been rejected by the competent authority. Thereafter, in accordance with the principle of natural justice, undersigned granted an opportunity of personal hearing to the Noticee on December 11, 2020. On schedule date of hearing, authorized representative of the Noticee *viz.*, Ms. Kumudini Bhalerao, Practicing Company Secretary and Mr. Saurabh Agarwal, Practicing Company Secretary appeared before me and made oral submissions on behalf of the Noticee and pleaded for not imposing any penalty on the Noticee, as non-disclosure in the matter was an unintentional and inadvertent act by the Noticee. The authorized representatives requested for a weeks' time to file written submission in the matter. Thereafter, vide letter dated December 17, 2020, the Noticee *inter alia* made following written submissions with respect to SCN:
- a. The delay in intimation of disclosures on the part of the Noticee was sheer miss out without any *mala fide* intention resulting in delay of just one day for two transactions and twenty-nine days for one transaction under question and may be viewed leniently in light of the following submissions.
 - b. The Noticee is a solo person and has no proper office or does not have any regular professional consultants/legal adviser. Default was thus without *mala fide* intention as apparent from the fact that he intimated to the Company within the prescribed time limit. However, the delay was caused in submitting the same to the Stock exchange merely due to lack of knowledge about the SEBI Regulations. Further, the disclosures were filed as soon as the requirements came to the knowledge.
 - c. There is no history of non-compliance of the SEBI Regulations in the past by the Noticee and this is the first instance of default by him. Further, there are no other proceedings or enforcement action taken against him for non-compliance of securities laws, pending or concluded, for any other violation under any other Law in the past. He is a law-abiding citizen, on the verge to become a senior citizen of the Country.
 - d. The Noticee is a highly educated man, having a Doctorate degree in Physics and having a Master's degree in Business strategy. His past record is a testimony that he understands and respects law in letter and spirit and all his actions have always been subservient to the laws of the land.

- e. Since last three years, the Noticee did not have any stable source of income to support his daily expenditure and the situation continues till date. The onset and continuance of COVID-19 has made it even more difficult for a man of his age to sustain in these very difficult and challenging times.
- f. Further, the transactions in question are almost 5 years old and there is no material indicator to indicate any *mala fide* act or intent. Also, there is no blameworthy conduct nor lethargic indifference nor the needless procrastination on part of the Noticee.
- g. It can be seen from the perusal of the detailed analysis of prices enclosed that during the relevant period, there was no significant market reaction after the disclosures were made which establishes that there was no loss incurred by the investors at large owing to the delayed disclosures made by the Noticee. Price movement in the scrip of the Company during disclosure period is as follows:

Transactions	Event	Dates	Weighted Average Price of the Scrip (in Rs)
Transaction 1 (Buy)	Disclosure to Stock Exchange	2-April-2014	15.25
		3- April -2014	14.77
		4- April -2014	14.78
		7- April -2014	16
Transaction 2 (Sell)	Disclosure to Stock Exchange	12-June-2014	17.15
		13- June -2014	16.7
		16- June -2014	15.92
		17- June -2014	16.6
Transaction 3 (Sell)	Disclosure to Stock Exchange	24-July-2014	21.65
		25- July -2014	19.89
		28- July -2014	21.00
		30- July -2014	20.97

- h. The Noticee has placed reliance upon following judgements of Hon'ble Securities Appellate Tribunal ("SAT") on quantum of penalty:
- i. **SEBI v/s Bhavesh Pabari (CIVIL APPEAL NO(S). 11311 OF 2013)**, wherein it was held that-

"We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by

clauses (a), (b) and (c) of Section 15J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty”.

- ii. **Chandrakant Gandhi Stock Broker P. Ltd. Vs. SEBI [2000 (37) CLA 238]** and Hon’ble SAT views in the matter of **Housing Development Finance Corporation Vs. SEBI [(2000) 28 SCL 289 (SAT)]**, wherein it was held that-

“default per se is not dominant guiding principle for imposition of penalty. It is the consequence of the default that weighs in taking the decision to impose penalty and its quantum”.

- iii. **Ambaji Papers Private Limited & Ors. v. Adjudicating Officer, Securities and Exchange Board of India (Appeal No. 201 of 2013 dated January 15, 2014)**, the Hon’ble SAT has held that -

“To this extent, the appellants, though inadvertently and without any intention, have defaulted in complying with the regulations regarding disclosures in question in our considered view and in the facts and circumstances of the present cases, the infraction, although venial in nature, is an infraction nonetheless. This Tribunal has held time and again that the penalty levied on any wrong-doer ought to be commensurate with the gravity of the deviation effected.”

- i. In view of the foregoing submissions, the Noticee pleaded for waiver of penalty on the ground of no *mala fide* intention to conceal the information and unintentional and inadvertent delay in making disclosure to the stock exchange.

10. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, reply/ submissions of the Noticee and documents produced by the Noticee before undersigned. In this case, it is an admitted fact that the Noticee has acquired and sold the shares of the Company during relevant time period and same had resulted in change in his shareholding in the Company. The limited question for determination is as to whether the Noticee had failed to make timely disclosures to the Company under Regulations 13(1) and 13 (3) read with Regulation 13(5) of the PIT Regulations and to the Company and BSE as required under Regulations 29(1) and 29(2) read with Regulation 29(3) of the PIT Regulations.

11. In this regard, I note that under Regulation 13(1) of the PIT Regulations, the requirement of making disclosure for an acquirer triggers on acquisition of more than 5% shares or voting rights in any listed company and an acquirer is required to make disclosure within 2 working days of to the Company on the receipt of intimation of allotment of shares; or on the acquisition of shares or voting rights. I also

note that similar requirements are specified under Regulation 29(1) of the SAST Regulations, wherein, an acquirer is required to make disclosure to the Company as well as exchanges wherein that security is listed, regarding his acquisition of more than 5% shares or voting rights in any listed company.

12. In the instant case, the Noticee has acquired 10.04% of shareholding in the Company on March 28, 2014 and he disclosed the aforementioned acquisition of shares to the Company on March 31, 2014 and to BSE on April 02, 2014. In this regard, I note that March 29, 2014 and March 30, 2014 were Saturday and Sunday and therefore, were non-working days. Considering the aforesaid fact, I note that the Noticee had made disclosure to the Company within a day of his said acquisition of shares in the Company and therefore, he had not violated the provision of the Regulations 13(1) of the PIT Regulations. I further note that the Noticee had made delayed disclosure to the exchange i.e. BSE in terms of violation of provision of Regulation 29(1) of the SAST Regulations, however, the delay in this case was of one day in making disclosure to the BSE.
13. As per the language of Regulation 13(3) of the PIT Regulations the compliance obligation of a person to make disclosure to the Company triggers when –
 - (a) there is a change in the total number of shares or voting rights held and change in shareholding or voting rights of such persons from the last disclosure made under Listing Agreement or under sub-regulation (1) or under this sub-regulation; and
 - (b) such change exceeds two per cent of total shareholding or voting rights in the company, even if such change results in shareholding falling below five per cent.
14. Similarly, under Regulation 29(2) of the SAST Regulations, the compliance obligation of a person to make disclosure to the Company and to the stock exchanges, triggers when he together with persons acting in concert with him, holds shares or voting rights entitling him/ them to five per cent or more of the shares or voting rights in a target company; and
 - (a) if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and
 - (b) such change exceeds two per cent of total shareholding or voting rights in the target company, even if such change results in shareholding falling below five per cent.
15. It is noted from the record that, first time the requirement for making disclosure to the Company under Regulation 13(3) of the PIT Regulations and to the Company and BSE under Regulation 29(2) of the

SAST Regulations triggered on May 08, 2014 and the disclosure was to be made within 2 working days i.e. by May 12, 2014, being May 10-11, 2014 non-working days. With regard to his transaction dated May 08, 2014, the Noticee had made disclosures to the Company on June 09, 2014 and to BSE on June 10, 2014. Therefore, I note that the Noticee had made delayed disclosure to the Company and the exchange i.e. BSE in terms of violation of provisions of 13(3) of the PIT Regulations and Regulation 29(2) of the SAST Regulations. The delay by the Noticee in this case was of 29 days in making disclosure to the Company and BSE. The said delay is also admitted by the Noticee

16. Further, second time the requirement for making disclosure to the Company under Regulation 13(3) of the PIT Regulations and to the Company and BSE under Regulation 29(2) of the SAST Regulations triggered on July 21, 2014 and the disclosure was required to be made within 2 working days i.e. by July 23, 2014. With regard to his transaction dated July 21, 2014, the Noticee had made disclosures to the Company on July 23, 2014 and to BSE on July 24, 2014. Therefore, I note that the Noticee had made delayed disclosure to the exchange i.e. BSE in terms of violation of provisions of Regulation 29(2) of the SAST Regulations. However, the delay by the Noticee in this case was of a day in making disclosure to the BSE.
17. I note that the provisions of Regulation 13(1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations provides the common threshold regarding the compliance obligation of a person when he holds shares or voting rights entitling him to five per cent or more of the shares or voting rights in a company. Similarly, Regulation 13(3) of the PIT Regulations and Regulation 29(2) of the SAST Regulations provides for the common threshold regarding the compliance obligation of a person when he holds shares or voting rights entitling him to five per cent or more of the shares or voting rights in a target company and the change in such holdings exceeds two per cent of total shareholding or voting rights in a company, even if such change results in shareholding falling below five per cent. With regard to such similar violations arising out of same transaction, the Hon'ble SAT judgment dated September 04, 2013 in the matter of *Vitro Commodities Private Limited Vs. SEBI* quoted by the Noticee can be relied upon. As per *ratio decidendi* in the aforesaid judgment, I am of the view that in the facts of this case, the violation, if any, of the provisions of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations are not substantially different and can be considered as a single violation. Similarly, the provisions of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations also provide for substantially overlapping obligations and can be treated single violation in respect of same transaction.
18. In this case, the Noticee has admitted to the alleged failure in making timely disclosures in terms of respective regulations. I note that there were three occasions of failure in making disclosure, however,

on two occasions delay was only of a single day and on third occasion delay was of 29 days. It is also to be noted that on occasions, where delay was of a single day, the Noticee made timely disclosure to the Company. From the price of the scrip of the Company, during or post disclosure by the Noticee, I observe that there was no major movement in the price of the scrip of the Company and therefore, I am of a view that the Noticee's disclosure did not have impacte on the price of the scrip.

19. Since the failure is linked to penal consequences, one has to look to it in a realistic manner and the consequences arising out of the failure. In this context it is to be noted that section 15I of the SEBI Act providing for adjudication, does not direct the Adjudicating Officer to impose penalty for failure *per se*. According to section 15I (2) if on inquiry the Adjudicating Officer is satisfied that the person has failed to comply with the provisions specified in the section, '*he may impose such penalty as he thinks fit*' in accordance with the provisions of any of those sections. The expression '*may*' used is not mandatory. Further the '*failure*' referred to therein need to be considered in the light of judicial pronouncements explaining the situation. In this context, it is also relevant to know the significance of the expression "*shall be liable to a penalty*" appearing in the section 15A. It is settled position that the expression "*shall be liable to a penalty*" occurring in many statutes has been held as not conveying the sense of an absolute obligation or penalty but merely imposing a possibility of such obligation or penalty. The Supreme Court in *Superintendent & Remembrancer of Legal Affairs to Govt. of West Bengal*; and *State of WB V Abani Maity AIR1979SC 1029*). Further, in this regard, the provisions of section 15J has to be properly understood, and not to be mechanically applied. Section 15J of the SEBI Act reads as follows: -

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."*

20. In the instant case, having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that it is not possible to determine the consequent loss caused to investors as a result of the default as found in this case. There is no material that the delayed disclosures 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 Noticee. I also observe that it is not a case of failure to disclose by the Noticee and in fact the disclosures were made but with delays. It can be said that corrective steps were taken by the Noticee even prior to issue of SCN in this matter. I am also mindful of the fact that the instant proceedings have been initiated in 2019 much after the transaction in questions relating to the

period March 28, 2014 to July 21, 2014. While holding so, I am not suggesting that in the strict technical sense, the Noticee had not failed in its obligation. But the failure has to be seen in realistic manner. In this case, there is no blameworthy conduct nor lethargic indifference nor the needless procrastination on its part. Considering these mitigating factors, criteria under section 15J and guidance pronounced by Hon'ble Supreme Court in aforementioned *Bhavesb Pabari Case*, I am inclined to conclude that the failure on the part of the Noticee is technical and venial and does not warrant imposition of monetary penalty upon it under section 15A (b) of the SEBI Act, and accordingly the SCN is disposed of.

21. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: December 30, 2020

Place: Mumbai

Amit Pradhan

Adjudicating Officer



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