

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. EAD-2/AO/DSR/RG/604-614/2017]**

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**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 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:**

- 1. Shri Asit C. Mehta (PAN: AAAPM9388F)**
- 2. Ms. Deena A Mehta (PAN: AABPM6683L)**
- 3. Asit C Mehta Forex Pvt. Ltd (PAN: AAACU0778J)**
- 4. Asit C Mehta Commodity Services Pvt. Ltd (PAN: AAACB2315A)**
- 5. Shri Aditya Asit Mehta (PAN: AKRPM6427C)**
- 6. Ms.GopaJayesh Desai (PAN: ADZPD1051E)**
- 7. Late. Shri.ThakorbhaiNanubhai Desai (PAN: AEAPD9234P)**
- 8. Ms.RupaAtul Shah (PAN: AAHPM2549M)**
- 9. Ms.ShobhnabenThakorbhai Desai (PAN: ADZPD1054B)**
- 10. AsitChimanlal Mehta HUF (PAN: AACHA7235D)**
- 11. Jayesh T Desai HUF (PAN: AACHJ7944N)**

**In the matter of**

**ASIT C .MEHTA FINANCIAL SERVICES LIMITED**

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- 1. The Hon'ble Securities Appellate Tribunal (SAT), in Appeal No. 490 of 2015, vide order dated March 21, 2016, while setting aside the adjudication order dated September 29, 2015, remanded the case to the Adjudicating Officer for passing fresh order on merits against the Noticees. Shri Asit C. Mehta, Ms. Deena A Mehta, Asit C Mehta Forex Pvt. Ltd, Asit C Mehta Commodity Services Pvt. Ltd, Aditya Asit Mehta, GopaJayesh Desai, ThakorbhaiNanubhai Desai, RupaAtul Shah, ShobhnabenThakorbhai Desai, AsitChimanlal Mehta - HUF and Jayesh T Desai - HUF (hereinafter collectively referred to as the Noticees) in relation to the SEBI Circular dated January 14, 2004 while holding the Noticees guilty of the violation of the provisions of Regulation 11(2) of the SEBI (Substantial Acquisition**

of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'SAST Regulations 1997') in the matter of Asit C. Mehta Financial Services Limited (hereinafter referred to as 'ACMFSL / Company'). The Hon'ble SAT, inter-alia observed as follows:

"Basic grievance of the appellants is that after the personal hearing was over the appellants could not file the written submissions within the specified time and as a result the impugned order is passed without considering the written submissions of the appellants. It is submitted that during the personal hearing as also in the written submissions the appellant had stated that the SEBI Circular dated January 14, 2004 is distinguishable on various grounds set out therein. However, in the impugned Order the AO of SEBI has not considered the arguments of the appellants in relation to SEBI Circular dated January 14, 2004. In these circumstances, in our opinion it would be just and proper to set aside the impugned order and restore the matter to the file of AO of SEBI for passing fresh order on merits and in accordance with law.

Apart from the above, the Apex Court in the case of SEBI vs. Roofit Industries Ltd., reported in (2016) 194 Comp. Cas. 186(S.C.) has held that while imposing penalty under Section 15H & 15HA the AO, during the relevant period had no discretion to reduce the penalty. By a subsequent order passed by another Bench of the Apex Court, the decision in case of Roofit Industries Ltd. (supra) has been referred to a larger Bench. Thus, whether in the facts of present case, the AO was justified in applying the discretion and impose lower penalty also need reconsideration".

#### **Notice, Reply & Personal Hearing:**

2. As the matter has been remanded by the Hon'ble SAT for passing a fresh order, the show cause notice dated July 07, 2014 (hereinafter referred to as the SCN) issued to the Noticees and the allegations leveled against them stand for the purpose of the present proceeding. Accordingly, in the interest of natural justice, vide notice dated April 27, 2017, an opportunity of personal hearing was granted to the Noticees on May 09, 2017. However, vide letter dated May 05, 2017, the Noticees submitted that some appeal pertaining to the interpretation of the term "bulk deal" is pending before the Hon'ble SAT in some other matter and the same

is posted for final hearing in the month of June 2017. Further, the Noticees also stated that their legal counsel is not available on the scheduled date of hearing and requested for keeping the proceedings in abeyance until conclusion of the appeal proceedings in SAT. I do not find any merit in the said argument made by the noticees inasmuch as the hon'ble SAT vide its order dated 21/03/2016 remanded the matter for passing fresh order on merits and in accordance with law as against the noticees. As the detailed submissions made by the Noticees vide their common reply dated May 05, 2015 and October 01, 2015 are available on record, therefore, I proceed further on the basis of material available on record .

3. Further, vide the said letter, the Noticees also intimated that Shri.Thakorbhai Nanubhai Desai passed away on June 15, 2016 and a certified copy of the Death Certificate of Shri. ThakorbhaiNanubhai Desai issued by the Department of Health, Government of Maharashtra, has been submitted in support thereof. In view of the same, the adjudication proceeding initiated against Shri. Thakorbhai Nanubhai Desai stand abated.

### **Consideration of Issues, Evidence and Findings**

4. I have carefully perused the charges leveled against the Noticees as per the SCNs, written submissions made by the Noticees and the material as available on record. The issues that arise for consideration in the present case are:

***(a) Whether the Noticees have violated the provisions of Regulations 11(2) of the SAST Regulations, 1997?***

***(b)Do the violations, if any, on the part of the Noticees attract any penalty under Section15H(ii) of the Act?***

***(c) If yes, what should be the quantum of penalty?***

5. Before proceeding further, it will be appropriate to refer to the relevant provisions of the SAST Regulations, 1997 which read as under:-

*"11(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:*

*Provided that .....*

*Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:-*

*(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through **bulk deal** /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buyback of shares by the target company;*

*..... "*

6. I find from the SCN that based on the shareholding pattern filed by certain companies, including ACMFSL, SEBI had carried out an examination in the said scrip. Upon examination, it was revealed that certain entities viz. Shri Asit C. Mehta, Promoter entity of the company, along with the Persons Acting in Concert (PACs) namely, Deena A Mehta, Asit C Mehta Forex Pvt. Ltd, Asit C Mehta Commodity Services Pvt. Ltd, Aditya Asit Mehta, GopaJayesh Desai, ThakorbhaiNanubhai Desai, RupaAtul Shah,ShobhnabenThakorbhai Desai, AsitChimanlal Mehta - HUF and Jayesh T Desai – HUF had acquired shares of company through bulk deal beyond the permissible limit on certain occasions. The details of acquisition made through bulk deals are as under:

<b>Name of the Acquirer</b>	<b>Date of Acquisition</b>	<b>Number of Shares Acquired</b>	<b>% of Shareholding Acquired</b>
Asit C Mehta	March 10, 2010	50000	1.01%
Asit C Mehta	March 22, 2010	49893	1.01%

7. From the above table, it is noted that Shri Asit C. Mehta, Promoter entity of ACMFSL, along with the PACs as mentioned in the above para, had acquired 50000 shares on March 10, 2010 and 49,863 shares on March 22, 2010 constituting 1.01% (on both the occasions) of the total equity capital through bulk deals. Upon the said acquisition, the Noticees were required to make public announcement in terms of the Regulation 11(2) of the SAST Regulations, 1997 as the said acquisition was through bulk deals. However, it was alleged that the Noticees had failed to make the public announcement. The shareholding details of the promoter and promoter group (acquirers) from quarter ended March 2009 to September 2011 are as under:

<b>Scrip Name</b>	<b>Asit C Mehta Financial Services Limited</b>	
<b>Quarter ended</b>	<b>% Promoter group holding during the quarter ending</b>	<b>Increase (%)</b>
Mar 2009	72.72	
Jun 2009	72.72	
Sept 2009	72.72	
Dec 2009	72.72	
Mar 2010	74.76	2.04%
Jun 2010	74.76	
Sept 2010	74.76	
Dec 2010	74.76	
Mar 2011	74.76	
Jun 2011	74.76	
Sept 2011	74.76	

8. Therefore, it was alleged in the SCN that the Noticees had violated the provisions of Regulation 11(2) of the SAST Regulations, 1997. I find that vide common letter dated May 05, 2015, Shri Asit C. Mehtahad submitted a detailed reply on behalf of all the Noticees. The Noticees had submitted that ACMFSL is a financial services firm. ACMFSL was formerly called Nucleus Securities Limited. Upon the scheme of Amalgamation between Nucleus Securities Limited and Nucleus Netsoft and GIS India Ltd, a trust named Nucleus Stock Trust was created. In order to give the background of creation of the said trust, the Noticees stated that the declaration of this trust was settled on February 24, 2006, for the benefit of ACMFSL and the trustees of this trust are Mr. Tushar Kapadia and an independent director of ACMFSL, whereas the beneficiary of the said trust is ACMFSL itself.
9. The Noticees further stated that in December, 2009, the holding of the promoter group in ACMFSL stood at 72.73%. Shri Asit. C. Mehta had purchased 1,00,333 shares of ACMFSL during March 2010 of which 50,000 shares were purchased on March 10, 2010 and 49,893 shares were purchased on March 22, 2010 through market mechanism. It is submitted by the Noticees that both these purchases were made in the open market by placing limit order on price. The said acquisition resulted in the promoter group's shareholding increasing from 72.73% to 74.76% (i.e. an increase of 2.03% during the quarter ending March 2010). The Noticees further submitted that as per the trade details for the respective dates, it was noted that out of the total purchase of 50, 000 shares by Shri Asit. C Mehta on March 10, 2010, 49,799 shares were received from a single party viz. Tushar Kapadia, Trustee. Similarly, 49,893 shares purchased by Shri Asit C. Mehta on March 22, 2010 were received from the same single party i.e. Tushar Kapadia. Therefore, it is the case of the Noticees that 99,692 shares of ACMFSL were sold by Nucleus Stock Trust to Shri Asit. C Mehta. Prior to the said acquisition of shares in 2010, ACMFSL was facing financial difficulties and required some funds. As per the relevant regulatory provisions, there was a bar on associate companies giving financial assistance to each other. There was a further bar on listed companies seeking financial assistance from any entity. Therefore, the Trust decided to sell off some of its shares so that ACMFSL could get some funds for its business. As the scrip was infrequently traded and illiquid, there was

hardly any interest of market participants in the said scrip. Hence, Shri Asit C. Mehta agreed to step in and acquire shares through market purchase. The other Noticees were unaware of the said acquisition till the receipt of the SCN in the matter.

**10.** The Noticees stated that upon the acquisition of the shares by Shri Asit C. Mehta, his holding in the company increased from 44.10% to 46.12%. The holding of the said Noticee in ACMFSL is still the same as on date and he has not purchased or sold any shares of ACMFSL thereafter. The entire consideration of shares sold i.e. sale proceeds so received by the Trust were given to ACMFSL immediately. Further, the Noticees stated that the SEBI Circular dated January 14, 2004 (SEBI/MRD/SE/Cir-7/2004) defined what constitutes a bulk deal. It has cast an obligation upon the stock brokers to disclose the same to the concerned exchange, immediately upon execution of such trade. Further, stock exchanges are directed to disseminate the aforementioned information on the same day after market hours, to the general public. BSE vide its notice dated May 05, 2009 had intimated its members that the requirement to upload the information regarding bulk / block deals to the exchange is not required. It clarified that the exchange would continue to provide indicative report of bulk / block deals which the members were required to verify. It is the case of the Noticees that the aforesaid circular did not cast any obligation on the stock broker, through whom the transactions are carried out, to inform its clients whether pre or post the transaction (s) that the transaction (s) being entered into constitute bulk deals. Thus, the Noticees did not know that the transactions entered into by them amounted to bulk deals.

**11.** Further, vide letter dated October 01, 2015 (received on October 05, 2015 i.e. after passing of the impugned adjudication order dated September 29, 2015), the Noticees submitted that the provisions alleged to have been violated i.e. Regulation 11(2) of the SAST Regulations, 1997 has been done away with in the new provision viz. Regulation 3(2) of the SAST Regulations, 2011. The said provision freely permits purchase of 5% in a financial year without any conditions of the nature contained in Regulation 11(2) of the SAST Regulations, 1997. The Noticees have even stated that the said fact is only a mitigating factor as the law

today does not consider the breach as a breach any more. Further, the Noticees also contended that the law is not of a retrospective repeal but is just a pointer to the lack of seriousness of the spirit underlying the provision alleged to be violated and therefore, the penalty needs to be commensurate with the technical and venial nature of the violation.

- 12.** The Noticees further submitted that there is no definition of 'bulk deals' under the SAST Regulations, 1997. Therefore, it would not be correct to import the definition from general market parlance since the purpose of the two situations is different. The market systems envisages a post-facto disclosure based on the overall market impact. It is submitted that this cannot be the basis of determination under the SAST Regulations given that the obligation to make an open offer cannot be based on a post- facto dissemination of facts.
- 13.** I have carefully perused the material available on record and the submissions made by the Noticees. I note that as per Regulation 11(2) of the SAST Regulations, 1997, any acquirer together with PACs holding 55% but less than 75% of the shares or voting rights in a company acquires any additional shares or voting rights together with PACs in that company, has to make a public announcement. However, the second proviso to Regulation 11(2) of the SAST Regulations, 1997 provides an exception to the said Regulations. It states that an acquirer along with PACs can acquire up to 5% additional shares or voting rights subject to that the said acquisition is made through open market purchase in normal segment on the stock exchange but, not through *bulk deal /block deal/negotiated deal/ preferential allotment*. In view of this, I do not find any merit in the submissions made by the Noticees to the effect that it is not a violation in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 inasmuch as the same was a violation of SAST Regulations, 1997. It is a settled law that statute /amendment is always prospective unless they are expressly made retrospective in operation. In this regard, I have also relied upon section 6 of the General Clauses Act, 1897 and also the ratios laid down by Hon'ble Supreme Court while interpreting the said section in *Ambalal Sarabai Enterprises Ltd. vs. Amrithlal & Co* (2001) 8 SCC 397, *Darshan Singh vs. Ram Pal Singh and Another* 1992 Supp (1) SCC



191, Govind Das v. ITO, (1976) 1 SCC 906, Jose Da Costa v. Bascora Sadasiva Sinai Narconium, (1976) 2 SCC 917 and Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540, to the effect that statute unless expressly made retrospective is prospective in operation.

- 14.** SEBI, vide Circular bearing No. SEBI/MRD/SE/Cir-7/2004 dated January 14, 2004, had stipulated in para 1, sub para 1.1 of the said Circular that a 'bulk deal' constituted of "all transactions in a scrip (on the exchange) where total quantity of shares bought /sold is more than 0.5% of the number of equity shares of the company listed on the exchange". Thus, once the quantitative limit of 0.5% is reached through one or more transactions executed during day in the normal market segment, then, the transaction is said to be a bulk deal.
- 15.** I find that in the present case the acquirer viz. Shri Asit C. Mehta along with the PACs, had acquired shares of ACMFSL during the relevant period. I find that the said acquisitions did cross the quantitative limit of 0.5% of the number of equity shares of the company listed on the exchange on both the occasions which amounted to bulk transactions as detailed in the above paragraphs. I note that the submission made by the Noticees that the major part of the acquisition was through one of the trustees namely, Shri Tushar Kapadia of Nucleus Stock Trust and that the said transactions were executed to infuse finances is of no relevance.
- 16.** Further, I also do not find merit in the submissions of the Noticees that there was no obligation cast upon the stock brokers to inform the clients that the transactions amounted to bulk deals inasmuch as the Acquirer was well aware of the quantum of the said acquisitions much in advance as the said acquisition was made through one of the Trustees of Nucleus Stock Trust for the purpose of urgent financial requirements as stated by the Noticees. Therefore, the submissions of the Noticees that they did not even have knowledge of the transactions which ultimately resulted in bulk deals is devoid of any merit. I find that as per Regulation 11(2) of the SAST Regulations, 1997, acquisition of shares, inter alia, by way of a bulk deal is prohibited. In the present case, public announcement has not been made by the noticees as required under SAST Regulations, 1997.

**17.**I find that the SEBI Circular No. SEBI/ MRD/SE/Cir-7/2004 dated January 14, 2004 was issued with a focus on imparting transparency in bulk deals so as to prevent rumors / speculations about such deals causing volatility in the price of the scrip. The said Circular mainly talks about the disclosures of trade details of bulk deals. Thus, I note that for the purpose of dealing with the concept of bulk deals, the said Circular has been referred to in the present matter and no charge with respect to failure of disclosures of the said deals by the Noticees has been made against the Noticees. Therefore, I am of the view that the submission made by the Noticee with respect to the obligation of the Stock Brokers and later the Stock exchanges to disseminate information about the execution of bulk deals has no relevance in the present case. I find that the main charge against the Noticees is that of failure to make public announcement as prescribed under Regulation 11(2) of the SAST Regulations, 1997 despite knowing in advance that the quantum of the said acquisition of shares was crossing 0.5% of the share capital of ACMFSL which amounts to 'bulk deal'.

**18.**I also note that Hon'ble SAT vide its order dated 20/04/2007( in Appeal no. 77 of 2016 - Alok Electricals Pvt. Ltd and 11 others vs. SEBI), inter-alia ,observed as follows:

" On perusal of the impugned Order, it is seen that the AO has imposed maximum penalty of Rs. 1 crore imposable under Section 15A(b) of SEBI Act by following the judgment of the Apex Court in the case of SEBI vs. Roofit Industries Ltd reported in (2016) 12 SCC 125. It is not in dispute that the Finance Act, 2017, Parliament has sought to render the decision of the Apex Court in case of SEBI vs. Roofit Industries Ltd. (supra) nugatory by inserting an Explanation to Section 15J of SEBI Act. As a result, the penalty imposed against the appellants without exercising any discretion cannot be sustained".

**19.**At this juncture, I would like to cite the order passed by the Hon'ble Supreme Court of India in the case of *Swedish Match AB &Anr. Vs SEBI* dated August 25, 2004, wherein, it was held as follows: "*Indisputably, the purport and object of which a regulation is made must be duly fulfilled. Public announcement is at the*

*base of Regulations 10, 11 and 12. Except in a situation which would bring the case within one or the other 'exception clause', the requirement of complying with the mandatory requirements to make public announcement cannot be dispensed with..."*

**20.** In view of the above, I conclude that the Noticees namely, Mr. Asit C Mehta, (Acquirer) along with the Persons Acting in Concert (PACs) namely, Deena A Mehta, Asit C Mehta Forex Pvt. Ltd, Asit C Mehta Commodity Services Pvt. Ltd, Aditya Asit Mehta, GopaJayesh Desai, RupaAtul Shah, ShobhnabenThakorbhai Desai, AsitChimanlal Mehta - HUF and Jayesh T Desai - HUF by failing to make public announcement, upon acquiring shares, through bulk deals have violated the provisions of Regulation 11(2) of the SAST Regulations, 1997 which makes them liable for monetary penalty under Section 15H(ii) of the Act which reads as under:

**15H.** *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*

*(i) .....*

**(ii)** *make a public announcement to acquire shares at a minimum price;*  
*or*

*(iii).....*

*(iv).....*

*he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

**21.** At this juncture, I would like to note the observations of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was observed 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..."*.

**22.** While determining the quantum of penalty under Section 15H(ii) of the Act, it is important to consider the factors stipulated in Section 15J of the Act, 1992 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."

**23.** I observe that, from the material available on record, it is not possible to quantify, any gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default of the Noticees. However, I find that the defaults are repetitive in nature. The Noticees, by not making public announcements on both the occasions, have failed to comply with the provisions of SAST regulations, 1997 and also deprived the shareholders of the exit opportunity at the relevant time and the same attracts monetary penalty. .

**ORDER**

**24.** 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 conclude that the proceedings against the Noticee viz. Shri Thakorbhai Nanubhai Desai stand abated.

- 25.** Further, I hereby impose a monetary penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakh Only) on the Noticees viz. Shri Asit C. Mehta (Acquirer) and Deena A Mehta, Asit C Mehta Forex Pvt. Ltd, Asit C Mehta Commodity Services Pvt. Ltd, Aditya Asit Mehta, Gopa Jayesh Desai, Rupa Atul Shah, Shobhnaben Thakorbhai Desai, Asit Chimanlal Mehta - HUF and Jayesh T Desai - HUF, persons acting in concert (PACs) with the Acquirer, under Section 15H(ii) of the SEBI Act, 1992, payable jointly and severally. In my view, the penalty is commensurate with the defaults committed by the Noticees.
- 26.** The amount of penalty shall be paid either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to " The Division Chief (Enforcement Department - DRA-III), Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052.

1.	Case Name :	
2.	Name of Payee:	
3.	Date of Payment:	
4.	Amount Paid:	
5.	Transaction No:	
6.	Bank details in which payments is made :	
7.	Payment is made for: (like penalties/ disgorgement / recovery/ settlement amount and legal charges along with order details)	

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

**Date: May 17, 2017**

**Place: Mumbai**

**D.SURA REDDY  
GENERAL MANAGER &  
ADJUDICATING OFFICER**